

# 2053

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**SECOND AMENDED AND RESTATED  
LEASE AND OPERATING AGREEMENT  
BETWEEN  
PHILADELPHIA REGIONAL PORT AUTHORITY  
AND  
ASTRO HOLDINGS, INC.  
FOR  
PACKER AVENUE MARINE TERMINAL**

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THIS SECOND AMENDED AND RESTATED LEASE AND OPERATING AGREEMENT (this "**Agreement**") is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between PHILADELPHIA REGIONAL PORT AUTHORITY ("**PRPA**"), a body politic and corporate and a public authority and instrumentality of the Commonwealth of Pennsylvania, and ASTRO HOLDINGS, INC. ("**Tenant**"), a Pennsylvania corporation.

**WITNESSETH:**

**WHEREAS**, PRPA and Holt Cargo Systems, Inc., a Delaware corporation ("**Holt**") entered into that certain Amended and Restated Lease and Operating Agreement dated December 30, 1990, filed with the Federal Maritime Commission ("**FMC**") on March 5, 1991 and designated FMC Agreement No. 224-200233-007, as amended by the following certain agreements filed with the FMC: FMC Agreement Nos.: 224-200233-008; 224-200233-009; 224-200233-010; 224-200233-011; 224-200233-012; 224-200233-013; 224-200233-014; 224-200233-015; 224-200233-016; and 224-200233-017, and as assigned to Tenant by that certain Assignment of Lease dated June 14, 1991 executed by Tenant and Holt (as amended, the "**First Amended Lease Agreement**");

**WHEREAS**, by that certain deed dated July 26, 1990 the City of Philadelphia (the "**City**") conveyed to PRPA all of the City's right, title and interest in and to those certain port facilities known as the Packer Avenue Marine Terminal ("**Terminal**") more fully described on **Exhibit A**, attached hereto and made a part hereof;

**WHEREAS**, PRPA owns in fee a certain portion of the Terminal (the "**Main Terminal Area**") as shown on **Exhibit B**, and PRPA and the Commonwealth of Pennsylvania (the "**Commonwealth**") own in fee as tenants in common a portion of Terminal described as part of **Exhibit C** (the "**Commonwealth Area**") (PRPA's and the Commonwealth's interest being 516/1000ths and 484/1000ths respectively);

**WHEREAS**, PRPA and the Commonwealth own in fee as tenants in common a portion of the Terminal commonly known as Shed C, as shown on **Exhibit B** and more particularly described as part of **Exhibit C (“Shed C”)** (PRPA’s and the Commonwealth’s interest being 32/1000ths and 968/1000ths respectively);

**WHEREAS**, PRPA is authorized to enter into leases, operating agreements and other agreements with respect to the Terminal and to amend and modify existing leases, operating agreements and other agreements with respect to the Terminal; and

**WHEREAS**, certain Tenant Improvements (as herein defined) will be constructed on the real property adjacent to the Terminal and more particularly identified on Exhibit K attached hereto (the **“Publicker Property”**); and

**WHEREAS**, Tenant and PRPA desire to amend and restate in its entirety the First Amended Lease Agreement to, among other things, evidence the commitment of PRPA and Tenant to make, or cause to be made, certain capital improvements to the Terminal and the Publicker Property, respectively, in order to increase the overall container capacity of the Terminal and Publicker Property.

**NOW, THEREFORE**, in consideration of the mutual terms, covenants, provisions and conditions herein set forth, and intending to be legally bound hereby, the parties hereto agree as follows:

## **ARTICLE I**

### **LEASE AND USE OF TERMINAL**

1.1 **Grant.** PRPA hereby leases to Tenant, and Tenant hereby leases from PRPA, the entire Terminal (consisting of the Main Terminal Area, the Commonwealth Area and Shed C), the Additional Parcels (as hereinafter defined) (the Main Terminal Area, the Commonwealth Area, Shed C and the Additional Parcels are hereinafter collectively referred to as the



**“Terminal”**) and PRPA Cranes as more particularly described on **Exhibit G** attached hereto (such cranes, together with any replacements or substitutions thereto owned by PRPA during the Term are referred to herein, collectively, as the **“PRPA Cranes”**), all for the term and on the conditions set forth herein.

1.2 **Appointment.** It is the intent of the parties that Tenant, subject to the terms and conditions hereof, shall be the exclusive public marine terminal operator at the Terminal, which shall be operated and used by Tenant or Tenant Management (as hereinafter defined) in a competent, efficient and first-class manner, to accommodate shipping of containerized, bulk and breakbulk cargo through the Terminal by water, rail and truck. For purposes of this **Section 1.2**, the word “Tenant” shall be deemed to mean and include any entity operating the Terminal on behalf of Astro Holdings, Inc. (each, an **“Operator”**); provided, however, that any Operator shall be owned and controlled by Tenant Management. Accordingly, notwithstanding anything to the contrary herein contained, PRPA and Tenant agree that any/all covenant(s) of Tenant herein contained shall be deemed satisfied if satisfied by any Operator on behalf of Tenant.

1.3 **Independent Contractor.** Tenant shall be an independent contractor in the performance of its obligations under this Agreement. Any employees of Tenant who perform terminal operations and/or stevedoring services or other services shall be the employees of Tenant solely, and PRPA shall not be a joint employer of any of Tenant’s employees. In addition, any employees of any other terminal operator and/or stevedoring company contracted by Tenant to perform any services at the Terminal shall not be the employees of PRPA, and PRPA shall in no way be considered a joint employer of such employees. To that end, Tenant shall have the exclusive right and duty to supervise and direct the day-to-day activities of its employees, including without limitation, the responsibility to determine and pay their wages and

any benefits, to fulfill all applicable requirements under any collective bargaining agreements and to pay all federal, state and local taxes or contributions imposed or required under unemployment, workers' compensation, social security, wage and income tax laws with respect to them. There shall be no direct or indirect participation by PRPA in any employee relations matter concerning those persons employed to perform terminal or stevedoring operations. Nothing herein shall be deemed to prohibit PRPA from participating in discussions or negotiations between labor and management in the interest of fostering labor relations.

1.4 Use. The primary use of the Terminal and to the extent applicable, the Cranes, as hereinafter defined, shall be as a marine terminal, which is hereby defined as a facility for: (1) the docking and mooring of vessels; (2) the receipt, assembling, distributing, moving, loading and unloading of merchandise, goods, cargo in containers, bulk, and breakbulk into and from such vessels; and (3) uses incidental thereto. Other permitted uses shall be the providing of berth space and/or terminal services to vessels of all kinds; the consolidating, stuffing and stripping, storing and warehousing of merchandise, goods and cargo; transferring merchandise, goods and cargo to, from and between cargo vessels of all kinds, trucks and railcars; ancillary office activities; and marine activities similar to the foregoing.

(a) Tenant shall not use or permit the Terminal to be used in whole or in part during the Term of this Agreement for any purpose other than as hereinabove set forth, except with the prior written consent of PRPA. Tenant expressly agrees that it shall not use the Terminal for any use in violation of any present or future laws, orders, ordinances, judgments, decrees, general rules, regulations or the like of any public or federal, state or local governmental authority (other than PRPA) at any time applicable thereto, including but not limited to, the Commonwealth and the City, and including but not limited to laws, rules, regulations, statutes



and ordinances relating to the public health, safety or welfare, or use of the Terminal. Tenant hereby expressly agrees at all times during the Term of this Agreement, at its own cost except as expressly provided in this Agreement, to operate the Terminal in compliance with any and all present and future laws, ordinances and general rules or regulations of any public or governmental authority (other than PRPA) now or at any time in force during the Term of this Agreement, and to pay and save PRPA harmless from all penalties, fines, damages or costs resulting from Tenant's failure to do so.

1.5 **PRPA Field Representative.** PRPA shall have the right to have present at the Terminal at all times a field representative (the "**PRPA Field Representative**"). At no cost or expense to PRPA, Tenant shall provide PRPA Field Representative with sufficient and secure office space (acceptable to PRPA) and access to restrooms at the Terminal to carry out his or her responsibilities. Tenant shall, at its sole cost and expense, provide in-terminal telephone service to PRPA Field Representative. PRPA shall have the right to install and operate a telephone system and line upon the Terminal, at PRPA's sole cost and expense, for use by PRPA and PRPA Field Representative. PRPA shall be responsible for the maintenance and repair of such telephone system and line.

1.6 **Operations to Maximize Use.** Tenant agrees to conduct its operations at the Terminal at all times in such a commercially reasonable way as to maximize the use of the Terminal.

1.7 **Title; Quiet Enjoyment.**

(a) PRPA represents and warrants to Tenant that, subject only to the matters referred to in this Section 1.7 and Section 24.1, it has good and marketable fee title to the Main Terminal Area, to its 516/1000ths interest in the Commonwealth Area, to its 32/1000ths fee

interest in Shed C, to all fixtures and other property located at Terminal on the Effective Date , including PRPA Cranes (but excluding the Tenant Cranes, as hereinafter defined, and further excluding all other container-handling equipment such as tractors, forklifts, chassis and top loaders owned by Tenant), to the Additional Parcels (except, with respect to all the foregoing, to the land extending from the low water mark to the pier head line of the Delaware River), and good and marketable title to its leasehold interest in the Commonwealth Area and Shed C. PRPA covenants that so long as Tenant observes and performs all of the covenants, terms and conditions to be observed and performed by Tenant under this Agreement, Tenant shall, subject to the matters referred to in this Section 1.7 and Section 24.1, peaceably and quietly hold and enjoy the Terminal pursuant to this Agreement for the term hereby demised. This Agreement and PRPA's interest in the Terminal are subject to (i) easements, agreements and restrictions of record; (ii) easements visible upon the ground; (iii) that certain Lease Agreement between PRPA, as lessor, and the Commonwealth, as lessee, and that certain Agreement of Sublease between PRPA, as sublessee, and the Commonwealth, as sublessor, both dated as of July 15, 1990 (collectively, the "**Commonwealth Leases**"); (iv) trackage rights of railroads as set forth on **Exhibit I**; (v) that certain option agreement between PRPA and the City dated July 26, 1990, a copy of which has been delivered to Tenant; (vi) existing riparian and navigational rights of the United States, the Commonwealth and the public; and (vii) rights-of-way for public streets. PRPA represents and warrants that the matters set forth in Subsections (i) through (iv) of the preceding sentence will not unreasonably interfere with the use or enjoyment of the Terminal as a marine terminal as contemplated by this Agreement, that the matters set forth in Subsection (v) of the preceding sentence will not unreasonably interfere with the use or enjoyment of portions of the Terminal other than the Additional Parcels as a marine terminal as contemplated by this



Agreement, and that the matters set forth in Subsection (vii) of the preceding sentence will not unreasonably interfere with the use or enjoyment of the Terminal as a marine terminal as contemplated by this Agreement except to the extent that streets shown on the City Plan and located within the Terminal are not vacated.

1.8 **Non-Disturbance.** The Commonwealth, by joining in this Agreement for the limited purposes set forth on its Joinder affixed hereto, as part fee owner of the Commonwealth Area and Shed C, agrees that, notwithstanding any breach or default by PRPA under the Commonwealth Leases, or any termination or expiration of the Commonwealth Leases prior to the end of the Term hereof, provided that Tenant is not in default hereunder, the Commonwealth and its successors or assigns, shall not disturb Tenant's possession of the Terminal pursuant to the covenants, terms and conditions of this Agreement.

1.9 **Estoppel Certificates.** Each of PRPA and Tenant, at any time from time to time upon the written request of the other of them (the "**Requesting Party**"), shall within fifteen (15) days of the date of such written request, execute and deliver to the Requesting Party a written statement:

- (a) confirming the commencement and expiration dates of this Agreement;
- (b) certifying that this Agreement is in full force and effect and has not been modified, assigned, supplemented or amended except by such writings as shall be stated;
- (c) certifying that all conditions and agreements under this Agreement to be satisfied or performed by the Requesting Party have been satisfied and performed except as shall be stated;

(d) certifying that the Requesting Party is not in breach or default under this Agreement and there are no defenses or offsets against the enforcement of this Agreement by the Requesting Party except as shall be stated;

(e) stating the date through which the Base Compensation, as hereinafter defined, and all other sums payable hereunder have been paid; and

(f) providing any other information which the Requesting Party shall reasonably request.

1.10 **Zoning and Other Permits.** PRPA represents and warrants that the use of the Terminal as a marine terminal as contemplated by this Agreement is permitted by PRPA's authority to locate marine facilities pursuant to the Philadelphia Regional Port Authority Act of 1989. PRPA makes no other warranty or representation with respect to the use of the Terminal except as expressly stated herein.

## ARTICLE II

### **EFFECTIVE DATE; TERM**

2.1 **Effective Date.** This Agreement shall become effective on the last to occur of (i) January 1, 2017; (ii) the date on which an executed copy of this Agreement is submitted to the FMC for filing in accordance with the Shipping Act of 1984; (iii) the date on which the Attorney General of the Commonwealth of Pennsylvania approves this Agreement; and (iv) the date on which the Commonwealth joins herein for the limited purposes set forth on the joinder attached to this Agreement (hereinafter the "**Effective Date**"). PRPA shall cause this Agreement to be submitted to the FMC for filing promptly following execution. The parties shall execute and deliver to one another a confirmation of the Effective Date promptly following the Effective Date.



2.2 **Term.** This Agreement shall commence on the Effective Date and shall end, subject to Section 2.3 hereof, on December 31, 2022 (the “**Term**”), unless sooner terminated as hereinafter provided.

2.3 **Extension; Renewal Options.**

(a) Upon the Substantial Completion Date (as herein defined), the Term of this Agreement will be extended for a period of twenty nine (29) years, eleven (11) months, and twenty-seven (27) days.

(b) If the Term of this Agreement is extended pursuant to Section 2.3(a) above, Tenant shall have the option to further extend the Term of this Agreement for two (2) consecutive additional periods of ten (10) years each (each of which period is hereinafter referred to as a “**Renewal Period**”), provided that Tenant is not in default under this Agreement beyond any applicable grace period either at the time of exercising such option or at the commencement of the respective Renewal Period. Tenant may exercise the aforesaid options to renew, in each instance, if Tenant gives PRPA written notice of Tenant’s exercise of such option at least 180 days prior to the end of the Term or the last day of the Renewal Period then in effect, as applicable. Each Renewal Period shall begin on the day immediately following either the end of the Term or the last day of the prior Renewal Period, as applicable. If Tenant fails to exercise its option with regard to any Renewal Period in a timely manner, Tenant’s rights hereunder with regard to such Renewal Period and any subsequent Renewal Period shall immediately and irrevocably terminate. The terms and conditions applicable in each Renewal Period shall be those specified for the Term of this Agreement, except for the compensation due from Tenant to PRPA for such Renewal Period which shall be established as set forth in subsection (c) below,

and except that upon the expiration of the second Renewal Period, Tenant shall have no further right to extend the Term.

(c) Tenant and PRPA shall negotiate in good faith the compensation to be paid by Tenant to PRPA with respect to a Renewal Period. In the event that Tenant and PRPA do not reach agreement as to such compensation at least ninety (90) days prior to the last day of the Term or the Renewal Period during which the option to renew was exercised, then the compensation due from Tenant to PRPA for such Renewal Period shall be determined by the Arbitrators. The Arbitrators shall base their decision upon such factors as they deem commercially reasonable, including but not limited to rent being charged for comparable facilities located in the Port of Philadelphia, and in other ports on the east coast of the United States of America, Tenant's costs incurred in providing services at the Terminal, PRPA's operational and capital costs (including capital funds of the Commonwealth) related to the Terminal, the fair market rental value of the Terminal if it were available for lease to other interested parties, and Tenant's costs incurred in connection with non-movable capital improvements to and (provided Tenant submits the Moveable Capital Inventory as required by Section 3.4 hereof) moveable capital improvements at the Terminal. The Arbitrators shall request such information as they deem necessary to make their determination including without limitation the accumulated depreciation in respect to the Moveable Capital Inventory. If the Arbitrators have not rendered their decision by the commencement of the applicable Renewal Period, Tenant shall continue to pay compensation at the rates applicable during the Lease Year preceding such Renewal Period until the Arbitrators have rendered their decision, and, within forty-five (45) days following such decision, Tenant shall pay to PRPA, or PRPA shall refund to



Tenant, as the case may be, the amount by which compensation for the applicable Renewal Period has been underpaid or overpaid.

(d) In the event Tenant exercises a renewal option or options hereunder, "Term" as used in this Agreement shall be deemed to include such Renewal Period(s), unless the sense of this Agreement requires otherwise. The parties hereto shall undertake, prior to the commencement of any Renewal Period, to file with the FMC an amendment extending this Agreement for such Renewal Period.

2.4 **Termination.** This Agreement is subject to the termination rights granted hereunder to PRPA and Tenant. No termination shall be effective until notice thereof has been filed with the FMC.

2.5 **Surrender of Possession; Holdover.**

(a) Tenant shall peaceably deliver up and surrender possession of the Terminal to PRPA at the expiration or termination of this Agreement. Except as otherwise provided in Subsections 2.5(b) and (c), Tenant shall not holdover in all or any part of the Terminal after termination or expiration of this Agreement without first obtaining the written approval of PRPA, which PRPA shall have no obligation whatsoever to grant. Any such holdover shall be deemed an extension of this Agreement on a month-to-month basis upon the same terms and conditions of this Agreement, except that Tenant shall pay to PRPA during each month of the holdover period an amount equal to the greater of (i) one-twelfth (1/12) of one hundred fifty percent (150%) of the Base Compensation, as hereinafter defined, payable for the twelve (12) months immediately preceding the inception of the holdover period, or (ii) an amount equal to the Base Compensation determined pursuant to the terms hereof with respect to operations during the holdover period. Nothing in this Section 2.5 shall be deemed to give

Tenant any right to holdover or to prevent PRPA from evicting Tenant or pursuing other remedies in the event of such holdover.

(b) Notwithstanding anything to the contrary contained herein, upon the expiration or termination of this Agreement, Tenant shall be permitted, at its risk, to leave Tenant's equipment and cargo upon the Terminal at such area as PRPA reasonably determines (taking into consideration the reasonable needs for security), for a period not to exceed thirty (30) days (the "**Equipment Removal Period**"). PRPA shall at least twenty (20) days prior to the expiration or, if appropriate, the termination of this Agreement notify Tenant of such designated areas. Tenant, prior to the expiration or termination of this Agreement, shall move, at its sole cost and expense, all of its equipment and cargo to such designated area. Tenant shall be permitted access to those areas of the Terminal designated by PRPA at reasonable times and upon reasonable notice to remove such equipment and cargo during the Equipment Removal Period. During the Equipment Removal Period, PRPA shall be entitled to receive rent at a rate of ten cents (\$0.10) per square foot per month for such area designated for cargo, and Tenant shall not be required to pay any holdover payment or charge for the storage of such equipment.

(c) Notwithstanding anything to the contrary contained herein, in the event PRPA does not purchase all of the Tenant Cranes upon the expiration or termination of this Agreement, the Tenant Crane(s) not purchased by PRPA shall not be used for operations of the Terminal following such termination or expiration, and Tenant shall be permitted to leave upon the Terminal at a location on the crane rail to be determined solely by PRPA, for a period not to exceed one hundred fifty (150) days following the expiration or termination of this Agreement (the "**Tenant Crane Removal Period**"), the Tenant Crane(s) not purchased by PRPA. There shall be no Base Compensation, holdover payments or other charges due from Tenant on account



of the Tenant Cranes during the Tenant Crane Removal Period. Tenant and its contractors shall be permitted access to the Terminal in accordance with the Plan, as hereinafter defined, to remove and dismantle such Tenant Crane(s) during the Tenant Crane Removal Period. If any such services are requested by Tenant, Tenant shall pay to PRPA all of PRPA's reasonable incremental out of pocket costs associated with or caused by such removal or dismantling such as, by way of example only, utility, security and labor costs. Tenant shall, at its expense, restore the Terminal and the crane rails to their condition prior to such removal.

(d) The Equipment Removal Period and the Tenant Crane Removal Period are hereinafter occasionally referred to collectively as the "**Removal Periods**." During the Equipment Removal Period, and any subsequent holdover period, Tenant shall cause to be insured as set forth in Section 5.1(b) all of Tenant's equipment and cargo which remains on the Terminal beyond the expiration or termination of this Agreement. During the Tenant Crane Removal Period, and any subsequent holdover period, Tenant shall keep the Tenant Cranes which are not purchased by PRPA insured from "all risks" of direct physical loss on a replacement cost basis. In addition, during the Removal Periods, and any subsequent holdover period, Tenant shall continuously keep in effect the insurance required pursuant to Article V; Tenant's indemnification obligation under Section 5.11(a) shall continue in full force and effect (subject to Sections 5.11(c) and (d)); Tenant's representations, warranties, covenants and indemnification obligations in Sections 6.2(a)(ii), 10.1, 10.2, in the last sentence of Section 10.3(a), Sections 10.4, 10.5 (to the extent generated by Tenant), and 10.6 shall continue in full force and effect; and all of PRPA's remedies in Sections 10.9 and 19.1 through 19.3 shall continue in full force and effect. Tenant shall further comply with the provisions set forth in Section 7.4 regarding the removal of the Tenant Cranes.

(c) If Tenant fails to remove Tenant's equipment and cargo by the end of the Equipment Removal Period, or to remove the Tenant Crane(s) by the end of the Tenant Crane Removal Period, then PRPA shall give Tenant written notice of such failure. If Tenant fails to remove Tenant's equipment and cargo or the Tenant Cranes within 30 days after such notice, then PRPA shall have the right to remove the same to a reasonable location off the Terminal, in which event Tenant shall pay to PRPA on demand all moving and storage costs incurred by PRPA. Following such removal and notification to Tenant of the location to which such items were removed, PRPA shall have no obligations whatsoever with respect to such items.

### ARTICLE III

#### COMPENSATION

3.1 **Base Compensation.** As consideration to PRPA for Tenant's use of the Terminal and PRPA Cranes, and for the benefits specified herein, Tenant shall during the Term hereof pay to PRPA in United States Dollars, on the fifteenth (15<sup>th</sup>) day of each month (or at such other times as may be specified herein), without prior demand, set-off, or delay (but after having deducted any credits specifically authorized by this Agreement in the amounts and at the times so provided), at the offices of PRPA as set forth in Section 28.1 hereof or at such other place as PRPA may from time to time direct, compensation as follows:

(a) **Base Rent.**

(i) Commencing on the Effective Date and continuing thereafter until the expiration of the Term, an annual base rent (the "**Base Rent**"), in advance, for each respective Lease Year (as hereinafter defined) in an amount equal to \$1,016,196 (in monthly installments of \$84,683 per month) subject to annual adjustment on the first day of each January by the Base Rent Adjustment Rate (as hereinafter defined) determined as follows:



(1) From and after the Effective Date until December 31, 2022, the **Base Rent Adjustment Rate** will be an amount equal to the annual increase or decrease of the Consumer Price Index or two percent (2.00%), whichever is less, if there is an increase in the Consumer Price Index.

(2) After the Substantial Completion Date and extension of the Term occurs pursuant to Section 2.3(a), during the period of January 1, 2023 through December 31, 2037 the **Base Rent Adjustment Rate** will be an amount equal to the annual increase or decrease of the Consumer Price Index or two percent (2.00%), whichever is less, if there is an increase in the Consumer Price Index.

(3) After the Substantial Completion Date and extension of the Term occurs pursuant to Section 2.3(a), during the period of January 1, 2038 through December 31, 2042 the **Base Rent Adjustment Rate** will be an amount equal to the annual increase or decrease of the Consumer Price Index or two and a half percent (2.50%), whichever is less, if there is an increase in the Consumer Price Index. Notwithstanding the foregoing, if PRPA Improvements are not Substantially Complete as of January 1, 2038, due to no fault of Tenant, its agents or employees, the Base Rent Adjustment Rate shall be adjusted to reflect the proportionate difference between the functional capacity of the Terminal versus the targeted capacity of the Terminal (the "**Discount Mechanism**") due to the failure of PRPA to cause the PRPA Improvements to be Substantially Complete at that time, and the Base Rent Adjustment Rate shall be adjusted from time to time, but not more frequently than once annually, throughout the Term, to reflect any change in the Discount Mechanism as a result of any increase in the Consumer Price Index; provided, however, that upon the date that the PRPA Improvements are Substantially Complete, the Discount Mechanism shall no longer apply. If the parties are unable

to agree upon the Discount Mechanism, the same shall be resolved pursuant to the provisions of Section 19.5 hereof.

(4) After the Substantial Completion Date and extension of the Term occurs pursuant to Section 2.3(a), after January 1, 2043 through the end of the Term and any Renewal Period, unless changed for such Renewal Period, the **Base Rent Adjustment Rate** will be an amount equal to the annual increase or decrease of the Consumer Price Index or three percent (3.00%), whichever is less, if there is an increase in the Consumer Price Index.

(ii) The term "**Consumer Price Index**" means the Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor (or any successor thereto) (the "**Bureau of Labor Statistics**"), for All Urban Consumers, Philadelphia-Wilmington-Atlantic City Index. If such Consumer Price Index is terminated, a successor or substitute index, appropriately adjusted, shall be reasonably selected by PRPA. If such Consumer Price Index is converted to a different standard reference base or is otherwise revised, the Consumer Price Index shall be determined with the use of such conversion factor, formula, or conversion table as may be published by the Bureau of Labor Statistics or, if the Bureau of Labor Statistics shall not publish same, then with the use of such conversion factor, formula, or table as may be mutually acceptable to PRPA and Tenant.

(iii) A "**Lease Year**" as used in this Agreement shall mean a one-year period, the first of which shall commence on the Effective Date. All Base Rent shall be due and payable during each respective Lease Year in twelve equal monthly installments. The first such monthly installment shall be due and payable on the Effective Date, and subsequent installments shall be due and payable on or before the fifteenth (15<sup>th</sup>) day of each succeeding calendar month during the Term; provided that if the Effective Date is a date other than the fifteenth (15<sup>th</sup>) day of



a calendar month, then the monthly installment of Base Rent for such partial month shall be prorated on a per diem basis.

(b) **Container Pick Fees.** A container pick fee (the “**Container Pick Fee**”) equal to the product of the applicable container pick rate (“**Container Pick Rate**”) as set forth in **Schedule I** below, multiplied by the number of moves of a container (loaded or unloaded) onto or off any and all vessels, excluding restows, which occurred at the Terminal during the preceding month (each such move is hereinafter referred to as a “**pick**”). Prior to the date that the PRPA Improvements are Substantially Complete, Container Pick Fees shall be payable, in arrears, on March 31<sup>st</sup> of each calendar year. Following the date that the PRPA Improvements are Substantially Complete, Container Pick Fees shall be payable as follows: (i) on October 15<sup>th</sup> of each calendar year throughout the Term, Tenant shall pay PRPA, in arrears, fifty percent (50%) of the Container Pick Fee then accrued through September 30<sup>th</sup> of that calendar year; and (ii) on March 31<sup>st</sup> of each calendar year, Tenant shall pay PRPA, in arrears, the remaining Container Pick Fee accrued through December 31<sup>st</sup> of that same calendar year.

#### **SCHEDULE I**

From and after the Effective Date to and until the Substantial Completion Date, the Container Pick Rate will be:

<b>Tier</b>	<b>Range</b>	<b>Amount</b>
1	0 to 50,000	\$5.00
2	50,001 to 75,000	\$3.50
3	75,001 to 100,000	\$2.50
4	100,001 to 250,000	\$1.50
5	250,001 and above	\$15.00

Thereafter, during the remainder of the Term, the Container Pick Rate will be:

<b>Tier</b>	<b>Range</b>	<b>Amount</b>
1	0 to 50,000	\$5.00

<b>Tier</b>	<b>Range</b>	<b>Amount</b>
2	50,001 to 75,000	\$3.50
3	75,001 to 100,000	\$2.50
4	100,001 to 250,000	\$1.50
5	250,001 to 350,000	\$15.00
6	350,001 to 425,000	\$22.50*
7	425,001 to 500,000	\$25.00*
8	500,001 to 1,000,000	\$29.00*

\*\* Notwithstanding the foregoing, if PRPA Improvements are not Substantially Complete as of January 1, 2023, due to no fault of Tenant, its agents or employees, the “Amount” for Tiers 6, 7, and 8 above shall be adjusted to reflect the Discount Mechanism; provided, however, that upon the date that the PRPA Improvements are Substantially Complete, the Discount Mechanism shall no longer apply.

(c) **Minimum Guaranteed Picks; Shortfall Fee.** Upon the Substantial Completion Date, Tenant agrees to handle the guaranteed minimum number of picks per Lease Year as set forth in **Schedule II** below (the “**Container Pick Guarantee**”). If Tenant does not achieve the minimum number of picks for a Lease Year to satisfy the Container Pick Guarantee, Tenant shall pay an additional fee (the “**Shortfall Fee**”) equal to the difference between the guaranteed minimum picks for the applicable Lease Year shown below in **Schedule II** and the actual picks in the same Lease Year, multiplied by \$5.00. The Shortfall Fee will be paid by Tenant to PRPA within thirty (30) days after the end of each Lease Year during the Term.

#### **SCHEDULE II**

<b>Lease Year</b>	<b>Guaranteed Minimum Picks</b>	<b>Lease Year</b>	<b>Guaranteed* Minimum Picks</b>	<b>Lease Year</b>	<b>Guaranteed Minimum Picks</b>
<b>2021</b>	185,000	<b>2033</b>	335,000	<b>2045</b>	335,000
<b>2022</b>	192,000	<b>2034</b>	335,000	<b>2046</b>	335,000
<b>2023</b>	200,000	<b>2035</b>	335,000	<b>2047</b>	335,000
<b>2024</b>	210,000	<b>2036</b>	335,000	<b>2048</b>	335,000
<b>2025</b>	225,000	<b>2037</b>	335,000	<b>2049</b>	335,000



2026	235,000	2038	335,000	2050	335,000
2027	250,000	2039	335,000		
2028	265,000	2040	335,000		
2029	280,000	2041	335,000		
2030	295,000	2042	335,000		
2031	310,000	2043	335,000		
2032	325,000	2044	335,000		

\* Notwithstanding the foregoing, if PRPA Improvements are not Substantially Complete as of January 1, 2023, due to no fault of Tenant, its agents or employees, the Guaranteed Minimum Pick volume above shall be adjusted to reflect the Discount Mechanism; provided, however, that upon the date that the PRPA Improvements are Substantially Complete, the Discount Mechanism shall no longer apply. If the parties are unable to agree upon the Discount Mechanism, the same shall be resolved pursuant to the provisions of Section 19.5 hereof.

Notwithstanding the foregoing, in the event of a major industry disruption that causes a container downturn in the Northeast United States that results in a drop in container volumes at the Terminal in excess of 20% of the container volumes from the prior Lease Year (each, a “**Major Industry Disruption**”), (i) Tenant will provide PRPA with written notice of the Major Industry Disruption and the causes thereof and the projected (or actual) impact on Tenant’s operations at the Terminal, and (ii) so long as Tenant is not in default of its obligations under this Lease beyond any applicable grace period, PRPA will waive the Container Pick Guarantee for a period of up to three (3) Lease Years (and Tenant will have no obligation pay the Shortfall Fee with respect to such period), commencing as first Lease Year following the Lease Year in which container volume at the Terminal decreased by more than 20%.

(d) **Breakbulk Cargo Fees.** As used herein, the term “**Breakbulk Cargo Fees**” shall mean the sum of the (i) Temperature Controlled Breakbulk Cargo Fees, (ii) Steel

Breakbulk Cargo Fees, (iii) General Breakbulk Cargo Fees, (iv) Wheeled Military Cargo Fees, and (v) Wheeled Nonmilitary Cargo Fees with such category of fees defined below:

(i) **Temperature Controlled Breakbulk Cargo Fees**. The term **“Temperature Controlled Breakbulk Cargo Fees”** means a fee equal to the product of \$1.50 multiplied by the number of metric tons of temperature controlled breakbulk cargo (herein, **“Temperature Controlled Cargo”**) moved onto or off any and all vessels at the Terminal during the preceding month.

(ii) **Steel Breakbulk Cargo Fees**. The term **“Steel Breakbulk Cargo Fees”** means a fee equal to the product of \$0.20 multiplied by the number of metric tons of breakbulk steel, iron, aluminum, zinc, copper and other metal ingots, sheets, rods, bars, coils and similar products (herein, **“Steel Cargo”**) moved onto or off any and all vessels at the Terminal during the preceding month.

(iii) **General Breakbulk Cargo Fees**. The term **“General Breakbulk Cargo Fees”** means a fee equal to the product of \$0.70 multiplied by the number of metric tons of all other types of breakbulk cargo not specified elsewhere in this Section 3.1(d) (herein, **“General Breakbulk Cargo”**) moved onto or off any and all vessels at the Terminal during the preceding month.

(iv) **Wheeled Military Cargo Fees**. The term **“Wheeled Military Cargo Fees”** means, with respect to each unit (driven or towed) of wheeled military cargo (classified as such by any branch of the United States Military), including any cargo nested therein (herein, **“Wheeled Military Cargo”**) moved onto or off any and all vessels at the Terminal during the preceding month, a fee equal to: (A) \$8.00 per unit for equipment weighing ten thousand (10,000) pounds or more (including the weight of any nested cargo), and (B) \$4.00



per unit for equipment weighing less than ten thousand (10,000) pounds (including the weight of any nested cargo).

(v) **Wheeled Nonmilitary Cargo Fees.** The term **“Wheeled Nonmilitary Cargo Fees”** means, with respect to each unit (driven or towed) of wheeled nonmilitary cargo, for passenger type automobiles only, and any cargo nested therein (herein, **“Wheeled Nonmilitary Cargo”**), moved onto or off any and all vessels at the Terminal during the preceding month a fee equal to \$1.50 per unit.

(vi) At such time, if any, that the Breakbulk Cargo Fee paid by Tenant for any Lease Year equals the Breakbulk Guarantee (as defined in Section 3.1(e) below), then no additional Steel Breakbulk Cargo Fees or General Breakbulk Cargo Fees shall be due for the remainder of such Lease Year. Payments due on account of Wheeled Military Cargo shall be made as follows: on or before the fifteenth (15th) day of each month, Tenant shall pay its good faith estimate of the compensation due pursuant to Section 3.1(d)(iv) for the preceding month for said Wheeled Military Cargo. Within thirty (30) days thereafter, Tenant shall reconcile its good faith estimate with the records of the U.S. military, copies of which shall be provided to PRPA. Based upon said reconciliation, Tenant shall either reduce the current month's payment by the amount of any overpayment made the previous month or add to the following month's payment any amount by which the previous month's payment was deficient.

(c) **Breakbulk Cargo Guarantee.** Commencing on the Effective Date and continuing thereafter during the Term until no Breakbulk Cargo (as defined below) is handled at the Terminal for a period of more than twelve (12) consecutive months, Tenant guarantees to PRPA that Tenant shall handle at the Terminal during each Lease Year an aggregate amount of Breakbulk Cargo that will generate Three Hundred Thousand Dollars (\$300,000) in Breakbulk

Cargo Fees (the “**Breakbulk Guarantee**”). For purposes of this Section 3.1(c), the term “**Breakbulk Cargo**” means all Temperature Controlled Cargo, Steel Cargo, General Breakbulk Cargo, Wheeled Military Cargo and Wheeled Nonmilitary Cargo. If Tenant fails to meet the Breakbulk Guarantee during any Lease Year, Tenant shall pay to PRPA within thirty (30) days of the end of such Lease Year a fee (the “**Breakbulk Guarantee Deficiency**”) equal to the difference between Three Hundred Thousand Dollars (\$300,000) and the total amount of Breakbulk Cargo Fees paid by Tenant to PRPA with respect to such Lease Year. PRPA’s sole remedy in the event that Tenant fails to meet the Breakbulk Guarantee shall be its receipt of the Breakbulk Guarantee Deficiency. To the extent that Tenant fails to meet the Container Pick Guarantee and Tenant exceeds the level of the Breakbulk Guarantee, the Breakbulk Fees paid by Tenant to PRPA in excess of the Breakbulk Guarantee shall be applied by PRPA against the shortfall in the Container Pick Guarantee and toward Tenant’s obligations in regard thereto.

(f) **Base Compensation Defined.** The fees, charges and compensation payable by Tenant to PRPA under this Agreement, including without limitation the Base Rent, the Container Pick Fees, the Breakbulk Cargo Fees, the Shortfall Fees, the Breakbulk Guarantee Deficiency, the Development Fee (as hereinafter defined) and the Additional Parcel Fee (as hereinafter defined) are hereinafter collectively referred to as “**Base Compensation.**” All amounts payable as Base Compensation and all other sums payable by Tenant hereunder shall be deemed to be Base Compensation and all remedies available at law or in equity for the collection of Base Compensation will be available to PRPA to collect the same.

(g) **Proration.** If the last Lease Year (including all exercised Renewal Periods) is less than a full calendar year, the Shortfall Fee for such Lease Year shall be prorated on a per diem basis. On the fifteenth day of the first month after the end of the Term, Tenant



shall pay to PRPA the balance of the Base Compensation due to PRPA with respect to the last Lease Year of the Term.

(h) **Bulk Cargo.** Prior to any bulk cargos being handled at the Terminal Tenant and PRPA shall agree upon the method of handling the bulk cargo and the terms and conditions with respect thereto.

### 3.2 **Security Deposit.**

(a) Tenant has delivered to PRPA, pursuant to First Amended Lease Agreement, a cash deposit equal to \$175,000 (the "**Security Deposit**"). The Security Deposit will remain in effect during the Term as security for the performance of Tenant's obligations under this Lease and will be deposited or invested by PRPA in any account or instrument in which PRPA may invest or deposit its funds pursuant to the Philadelphia Regional Port Authority Act, as directed from time to time in writing by Tenant. If Tenant does not provide PRPA with written directions regarding the investment of the Security Deposit, PRPA shall deposit or invest the Security Deposit in direct obligations of the United States Government, each having a maturity date of ninety (90) days or less. All interest accruing on the Security Deposit shall be for the account of Tenant. Interest accrued on the Security Deposit, if any, shall be distributed to Tenant by PRPA by check on March 1, June 1, September 1 and January 1 of each Lease Year (or if such date is a Saturday, Sunday or a holiday on the next business day).

(b) Subject to Section 19.1(d), if at the end of the Term of this Agreement or the sooner termination hereof any of the Base Compensation shall be overdue and unpaid, or any other sum payable by Tenant to PRPA hereunder shall be overdue and unpaid, then PRPA may, at its option, draw on the Security Deposit for the payment of any such overdue Base Compensation or other sum in an amount equal to the amount by which such overdue Base

Compensation and other sums exceeds undisputed amounts PRPA owes to Tenant. In the event of the failure of Tenant to keep and perform any of its other obligations under this Agreement, then PRPA, at its option, may draw on the Security Deposit to the extent necessary to make PRPA whole and to compensate PRPA for any loss or damage sustained or suffered by PRPA due to such breach on the part of Tenant. If at any time PRPA should draw on the Security Deposit, Tenant shall, within sixty (60) days after written demand by PRPA, cause the Security Deposit to be restored to its full required amount.

(c) Should Tenant comply with all of said terms, covenants and conditions hereunder and pay all Base Compensation hereunder provided for, and pay all other sums payable by Tenant to PRPA hereunder, the Security Deposit shall be returned to Tenant on or before sixty (60) days after the later of (i) the end of the Term or the earlier termination of this Agreement, (ii) the end of the Removal Periods; (iii) the completion of all restorations or repairs to the Terminal required to be made by Tenant, including, if applicable, repairs or restorations necessitated by the removal of the Tenant Cranes; or (iv) the determination by the Arbitrators of any and all issues submitted to them the determination of which could result in Tenant's owing sums to PRPA. At such time, if any, after the end of the Term or the termination of this Agreement that such repairs or restorations are limited to reasonable punchlist items or other reasonably ascertainable amounts substantially less than the amount of the Security Deposit, PRPA shall agree to the reduction of the aggregate amount of the Security Deposit to an amount equal to one hundred fifty percent (150%) of the cost of such punchlist items or other ascertainable amounts, as reasonably determined by PRPA.

3.3 **Records and Books.** Tenant shall keep complete and accurate books, records and accounts relating to all its operations upon the Terminal, including without limitation the number



of containers handled, the number of picks, the tonnage of bulk and breakbulk (other than steel) cargo handled, the tonnage of steel handled, the hours of Crane usage, the number of moves through the Terminal gate, cargo storage and transshipment information, and vessel occupancy of the berths, and PRPA and the Commonwealth shall have the right and privilege through their representatives and at all reasonable times, upon one week's advance notice, to inspect and audit such books, records and accounts in order to verify the accuracy of the amounts of Base Compensation due and owing to PRPA hereunder. Tenant agrees that such books, records and accounts for each year shall be kept by Tenant for a ten (10) year period and shall be made available to PRPA and/or the Commonwealth in Philadelphia, Pennsylvania, upon written request. Tenant shall keep separate books and records for its operations at the Terminal and its other operations. If any audit conducted under this Section 3.3 shows that Tenant has underpaid the Base Compensation due from it to PRPA under the terms of this Agreement, Tenant shall pay the shortfall upon demand, and in the event the amount of underpayment is in excess of three percent (3%) of the amount paid by Tenant with respect to the audited period, then Tenant shall pay all costs and expenses for PRPA audit, if any. PRPA shall use its best efforts to coordinate any such audit with the Commonwealth. The duty to retain books, records and accounts imposed on Tenant and the right herein granted by Tenant to PRPA and the Commonwealth to inspect such books, records and accounts shall survive the expiration or termination of this Agreement.

3.4 **Reports.** Tenant shall submit to PRPA, as soon as it is practicable, on a ship-by-ship basis written vessel activity reports ("**VARs**") in form satisfactory to PRPA, summarizing all vessel movements, all containers and cargo loaded, discharged or held at the Terminal, and the number of containers handled, both loaded and empty, the type of cargo (temperature controlled, steel, or other) and the tonnage of such cargo. To the extent necessary for PRPA to

comply with all applicable laws and regulations, Tenant shall also submit to PRPA such other reports as reasonably requested in writing by PRPA from time to time. PRPA shall maintain the confidentiality of all information regarding Tenant's customers and all Tenant trade secrets contained in such reports (other than the VARs) to the extent permitted by law. On or before July 31 of each year, Tenant shall submit to PRPA an itemized inventory of all moveable capital equipment owned or leased by Tenant and used at the Terminal during the year ended July 1 of such year and of all moveable capital equipment owned or leased by Tenant and removed from the Terminal during such year ("**Moveable Capital Inventory**"). Tenant and PRPA shall investigate the possibility and feasibility of providing to PRPA on-line access to Tenant's computer system and programs in order for PRPA to review data therein contained in respect of the information required to be set forth in the VARs. Such access shall not unreasonably interfere with Tenant's use and operation of the computer system, and shall not permit PRPA access to any confidential information of Tenant not otherwise available to PRPA under this Agreement.

3.5 **Late Charges.** As compensation to PRPA for costs and expenses involved in handling delinquent payments, all charges that remain due and unpaid for a period of ten (10) days after the date they are due shall be subject to a delinquency payment equal to one and one-half percent (1.5%) of said charges per month or fraction thereof from the end of the ten-day period until the charges have been paid. Said delinquency payment is in addition to all other remedies that PRPA may have that are provided by this Agreement or otherwise by law to enforce payment of charges that have been incurred and have not been paid.

3.6 **Certain Taxes.** If the Terminal or operations on the Terminal become subject to any taxes, assessments or charges which are not in effect on the Original Tenant Possession Date



and which will result in a significant increase in the tax burden of Tenant, then PRPA and Tenant will renegotiate the Base Compensation in an equitable manner taking into account such increase. In the event that Tenant and PRPA are unable to agree on an equitable adjustment to the Base Compensation, the matter shall be determined by the Arbitrators. Nothing in the preceding sentence shall be deemed to entitle Tenant to any renegotiation of the Base Compensation on account of any federal or state corporate income tax, or any change in the rates thereof.

#### ARTICLE IV

##### **MARKETING; DEVELOPMENT AND USE COVENANTS; COOPERATION**

4.1 **Marketing.** Tenant shall market its services offered at the Terminal and the Terminal itself in a professional, first class manner at least equivalent to the marketing efforts of similar terminals.

4.2 **Development and Use Covenants.**

(a) Tenant agrees that, in consideration of the agreement of PRPA to make PRPA Improvements, extend the Term, and to agree to the other provisions of this Agreement, Tenant (the "**Development Covenants**"):

(i) shall not permit or allow the Publicker Property to be used in a manner that would impair the ability of Publicker Property to provide priority supplemental storage capacity for various cargos and to support container capacity of the Terminal during the Term;

(ii) shall not permit or allow the Publicker Property to be used by parties, or for purposes, unrelated to Tenant's operations at the Terminal;

(iii) shall cause the Publicker Property to be continually used and operated in conjunction with Tenant's operations at the Terminal in order to increase the overall storage and TEU capacity of the Terminal;

(iv) shall make, or cause to be made, at no expense to PRPA, such improvements, repairs and replacements to the Publicker Property as may be specified on Exhibit F and as may be necessary throughout the Term in order to maintain the Publicker Property in good condition; and

(v) shall purchase, install, maintain and replace, as needed, from time to time, or shall cause to be purchased, installed, maintained and replaced, as needed, from time to time, such equipment as may be necessary to establish and maintain a reach-stacker layout and operation within the Terminal and Publicker Property (or other system as may be feasible during the Term) in order to increase the storage and container capacity of the Terminal. The parties agree that the timing and sequencing of equipment and improvements identified in Section 4.2(a)(iv), this Section 4.2(a)(v), and Exhibit F hereto shall be as agreed upon and memorialized in writing by the parties hereto; provided, however, that Tenant shall nevertheless cause the Tenant Improvements identified on Exhibit F to be Substantially Complete within ninety (90) days after the date that the PRPA Improvements shall be Substantially Complete.

(b) If Tenant complies with the Development Covenants for a period commencing on the Effective Date and expiring on the earlier to occur of (i) the expiration of the twentieth (20<sup>th</sup>) Lease Year following the Effective Date or (ii) the expiration of the first Lease Year during the Term during which Tenant handles at least 850,000 TEUs of container cargo at the Terminal and the Publicker Property, if any, then the Cargo Covenant (as herein after defined) shall terminate and be of no further force and effect.



(c) If Tenant complies with the Development Covenants for a period commencing on the Effective Date and expiring on the earlier to occur of (i) the expiration of the twentieth (20<sup>th</sup>) Lease Year following the Effective Date or (ii) the expiration of the first Lease Year during the Term during which Tenant handles at least 850,000 TEUs of container cargo; and (iii) the Terminal plus any additional PRPA owned property that is being used by Tenant to directly support container operations at the Terminal combined have a throughput capacity of at least 900,000 TEUs, if any, then the Development Covenants and Cargo Covenant (as herein after defined) shall terminate and be of no further force and effect.

(d) From and after the Effective Date to and until the earlier to occur of (i) the expiration of the twentieth (20<sup>th</sup>) Lease Year following the Effective Date or (ii) the expiration of the first Lease Year during the Term during which Tenant handles at least 850,000 TEUs of container cargo at the Terminal and the Publicker Property, if any, PRPA agrees that, so long as Tenant in in compliance with the requirements of Section 4.2(a) above, PRPA will not upgrade its existing terminals to function as container terminals or develop a new container terminal. The parties agree that this restriction does not apply to PRPA facilities that utilize mobile harbor cranes or ships gear as the method of discharge for containers; provided, however, that container operations at such terminal(s) shall at all times throughout the Term represent an incidental portion of the overall operations at any such terminal(s).

(e) During the Term (including any and all Renewal Periods) Tenant agrees to accommodate and handle at the Terminal all new container business which Tenant secures for the Delaware River (the "Cargo Covenant"). Notwithstanding the preceding sentence, Tenant may handle at other terminals (i) incidental containers on ships whose primary mission is not the transportation of containers and (ii) new container business in the event that (A) the yard

throughput capacity of the Terminal is unable to accommodate such containers due to the volume of cargo being handled at the Terminal and (B) PRPA, within thirty (30) days following notice by Tenant to PRPA of the Terminal's inability to accommodate such container business, is unable to provide substantially equivalent alternate facilities at which Tenant can handle such container cargo at costs comparable to costs for similar container cargo incurred by Tenant at Tenant's other terminals or is unable to provide alternative arrangements for some or all of Tenant's other activities at the Terminal in order to make space available at the Terminal to accommodate such new container business. Tenant shall not be required to accept such alternative arrangements unless the parties reach a mutually acceptable arrangement with respect to the adverse financial impact, if any, of such alternative arrangements on Tenant and/or its customers. Tenant shall consider in good faith any such alternative facility offered for Tenant's use by PRPA. Tenant shall provide, upon PRPA's request, all information relating to the costs incurred by Tenant at Tenant's other terminals for container cargo similar to the proposed new container business. Tenant recognizes that such proposed alternative facilities and any use thereof by Tenant may be subject to the rights of other tenants or licensees of PRPA, but Tenant shall not be required to accept any alternative facilities if the exercise of such rights by others would unreasonably interfere with Tenant's operations. In the event Tenant and PRPA disagree as to whether the Terminal has the capacity to handle such new container business, whether an alternate facility proposed by PRPA is substantially equivalent, or whether an alternate arrangement has an adverse financial impact on Tenant or its customers, the issue shall be submitted to the Arbitrators whose decision shall be final. If any Tenant container customer does not wish to call at either the Terminal or such alternative facility, and PRPA has been afforded a reasonable opportunity to participate with Tenant in discussions with its customer to persuade



such customer to call at the Terminal or the alternative facility, then Tenant may accommodate such customer at Tenant's other terminals.

(f) During the Term (including any and all Renewal Periods) Tenant agrees to accommodate and handle all auto business at the Terminal that it handles on the Delaware River except for (i) auto business not calling at PRPA owned facilities as of the Effective Date hereof; or (ii) auto business that previously called at PRPA-owned facilities but has not called at a PRPA-owned facility in the then previous thirty-six (36) calendar months. During the Term, Tenant will not solicit to move or offer to relocate any auto business calling at the Terminal as of the Effective Date hereof to any facility not owned by PRPA. If any automobile customer of Tenant as of the Effective Date hereof does not wish to call at either the Terminal or any alternative facility owned by PRPA, Tenant agrees that Tenant will, prior to offering any alternative facility to such customer, notify PRPA of such customer and afford PRPA a reasonable opportunity to participate with Tenant in discussions with such customer to persuade such customer to call at the Terminal or an alternative facility owned by PRPA, and, if the customer still does not wish to call the Terminal or any alternative facility owned by PRPA, then Tenant may accommodate such customer at another terminal.

4.3 **Reserved.**

4.4 **Definition of Tenant.** For the purposes of Section 3.6 and 4.2 and 4.5, Tenant shall mean Astro Holdings, Inc., its parent from time to time, and all present and future subsidiaries and affiliates, any Transferee (as hereinafter defined), and Tenant Management.

4.5 **Certain Tax Exemptions.** PRPA shall use its best efforts to assist Tenant in qualifying for the same exemptions from Commonwealth of Pennsylvania and/or City of

Philadelphia taxes related to Tenant's use and occupancy of the Terminal that are available to any other similarly situated lessees of PRPA.

4.6 **Certain Operating Agreements.** From and after the date hereof until the expiration or termination of this Agreement, PRPA shall not make or enter into any cost-plus arrangements (as hereinafter defined) with any terminal operators, stevedoring companies or other terminal lessees or licensees with respect to container cargo facilities owned, leased or operated by PRPA, except as permitted under this Section 4.6. The term "cost-plus arrangement" shall mean, with respect to terminal operations and/or stevedoring services, payment by PRPA of (or agreement to pay) all or any part of any terminal operating expense that is not paid by PRPA on behalf of Tenant under this Agreement, or payment by PRPA of a sum of money, or other comparable arrangement, not paid on behalf of Tenant (excluding for this purpose as a payment to Tenant any credits provided to Tenant by the terms of this Agreement). Payment by or on behalf of PRPA of capital costs in connection with any PRPA port facility shall not give rise to a cost-plus arrangement. PRPA shall not make or enter into any cost-plus arrangement with respect to container cargo facilities owned, leased or operated by PRPA prior to publicly soliciting responses to a request for proposals with respect to such facility. If, upon PRPA's exercise of its reasonable business judgment (which shall relate to the quality and cost of the service to be provided, the need therefor, and the desire to promote PRPA's policies and objectives), PRPA makes or enters into a cost-plus arrangement at such container cargo facilities with a party other than Tenant, then PRPA shall notify Tenant that it has done so, and Tenant and PRPA shall negotiate in good faith for a period of up to thirty (30) days with respect to the reduction, if any, required to be made in the Base Compensation payable by Tenant to PRPA hereunder and other modifications, if any, required to be made to this Agreement in order to



permit Tenant to compete on commercially reasonable terms for business with the intended recipient of the cost-plus arrangement. If at the expiration of such 30-day period Tenant and PRPA have not reached a mutually satisfactory agreement, then the issue, at Tenant's option and as Tenant's sole remedy, shall be submitted to the Arbitrators, whose decision shall be final, or by written notice to PRPA within 30 days of the expiration of such 30-day period, Tenant may terminate this Agreement. In the event the issue is submitted to the Arbitrators, the Arbitrators may consider all matters that may bear upon Tenant's ability to compete on commercially reasonable terms. Notwithstanding the foregoing, if an agreement for services at a container cargo facility owned, leased or operated by PRPA expires, is terminated by PRPA or is breached by the terminal operator, stevedoring company, lessee or licensee, then PRPA may make or enter into a cost-plus arrangement with respect to such services at such facility for a period not to exceed nine (9) months (including renewal periods) without thereby invoking the provisions of this Section 4.6. Nothing contained in this Section shall be deemed to restrict or prohibit PRPA from entering into a management agreement with a person or entity that manages and operates such facility for PRPA in consideration of a predetermined fee paid by PRPA which is not tied to and will not be adjusted by such person's or such entity's operating costs or results of operations, provided that any such person or entity and any of their affiliates will not also provide, directly or indirectly, stevedoring services or equipment at such facility. The exercise by any lessee or operator of a PRPA port facility of any right of renewal contained in an agreement filed as of the date hereof with the FMC shall not be deemed to invoke the provisions of this Section 4.6.

## **ARTICLE V**

### **INSURANCE; INDEMNIFICATION**

#### **5.1 Property Insurance.**

(a) PRPA participates in the Commonwealth's insurance program administered by the Department of General Services (herein, the "**Insurance Program**") and, except with respect to self-insurance limits established by PRPA from time to time in conjunction with PRPA's participation in the Insurance Program, PRPA shall cause the Terminal, including without limitation the pier and Wharf Structure, to be continuously insured from risk of direct physical loss on a replacement cost basis during the Term pursuant to the terms of the Insurance Program (or if the Insurance Program shall be discontinued, pursuant to third party insurance approved by PRPA) and any additional third party insurance procured by PRPA. With respect to any third party insurance obtained by PRPA (and, if permitted by the terms of the Insurance Program, with respect to insurance procured through the Insurance Program), PRPA shall include Tenant as an additional insured as its interest may appear, including extra expense insurance in the amount of One Million Dollars (\$1,000,000) from any one loss, with no monthly limitation.

(b) Tenant shall keep the contents of the Terminal, including the property of others and cargo, improvements and betterments, and "contractor's equipment," continuously insured during the Term from "all risks" of direct physical loss, on a legal liability basis with respect to cargo and property of others, and an actual cash value basis with respect to all other contents, improvements and betterments and "contractor's equipment." Tenant shall include PRPA and the Commonwealth as additional insureds as their respective interest may appear.

(c) Tenant shall keep the Cranes continuously insured from "all risks" of direct physical loss, including "mechanical breakdown" and removal of any boom warranty, on a replacement cost basis during the Term; provided, that if mechanical breakdown coverage for PRPA Cranes is not available at rates mutually acceptable to Tenant and PRPA, then Tenant



shall have no obligation to obtain mechanical breakdown coverage for any of the Cranes. With respect to the Cranes, Tenant shall also maintain extra expense insurance and business interruption insurance in the combined amount of One Million Dollars (\$1,000,000) from any one loss, with no monthly limitation. PRPA shall pay to Tenant an equitable percentage of the cost of such coverage allocable to PRPA Cranes by crediting such amount to Tenant against Base Compensation owing by Tenant in the month immediately following Tenant's payment of a premium for such insurance. Tenant shall include PRPA and the Commonwealth as additional insureds, loss payees or mortgagees as their respective interests may appear.

(d) PRPA shall provide (via the Insurance Program or third party insurance procured by PRPA or a combination of both) comprehensive boiler and machinery coverage on insurable objects (excluding the Cranes) on a Repair or Replacement basis during the Term. With respect to any third party insurance obtained by PRPA (and, if permitted by the terms of the Insurance Program, with respect to insurance procured through the Insurance Program), PRPA shall include Tenant as an additional insured as its interest may appear, including extra expense insurance in an amount of Two Hundred Fifty Thousand Dollars (\$250,000), for any one loss, with no monthly limitation.

5.2 **Liability Insurance.** Tenant shall continuously keep in effect comprehensive general liability insurance of at least Ten Million Dollars (\$10,000,000.00) as to personal injury, including bodily injury, sickness, disease or death, and property damage combined. Tenant shall cause the policies evidencing such insurance to name the Commonwealth and PRPA as additional insureds and to incorporate cross liability endorsement provisions substantially as follows:

“Cross Liability - it is understood and agreed that the insurance afforded by this policy for more than one insured shall not operate to increase the limits of the Company’s liability, but otherwise shall not operate to limit or void the coverage of any one insured with respect to claims against the said insured by any other insured or the employees of any such other insured.”

5.3 **Worker’s Compensation Insurance.** Tenant itself shall maintain in full force and effect at all times during the Term of this Agreement Statutory Worker’s Compensation and Employers’ Liability insurance, United States Longshoremens’ and Harborworkers’ Act insurance, Jones Act insurance, Occupational Disease Act insurance, and any disability benefits act insurance required by law, in appropriate statutory amounts under policies written by an insurance company authorized to engage in the insurance business in the Commonwealth of Pennsylvania or otherwise acceptable to PRPA, or Tenant in the event Tenant becomes an approved self-insured. In the event Tenant becomes an approved self-insured, it agrees to maintain excess insurance of the types enumerated above in this Section 5.3 in amounts not less than \$10,000,000 for each accident or occupational disease.

5.4 **Automobile Insurance.** Tenant shall continuously keep in effect comprehensive automobile liability insurance in the amount of \$10,000,000 per each accident for bodily injury and property damage combined.

5.5 **Commonwealth Insurance Program.** Notwithstanding anything in this Article V to the contrary, PRPA’s participation in and full compliance with the requirements of the Insurance Program shall be deemed to satisfy all requirements of this Article V applicable to PRPA.



5.6 **Waiver of Subrogation.** All casualty insurance (excluding that described in Section 5.3) and property insurance policies carried by either party covering PRPA and Tenant as required by this Article V shall expressly waive any right of subrogation on the part of the party carrying such insurance and its insurer against the other insured; provided, however, that if there is an additional premium charge to obtain such waiver, then the party carrying such insurance may discontinue such waiver upon notice to the other party of an intent to discontinue such waiver, unless within thirty (30) days of the giving of such notice the other party agrees to pay such additional premium charge.

5.7 **Insurance General.**

(a) If either Tenant or PRPA fails to maintain any insurance required in this Agreement to be maintained by Tenant or by PRPA, the other party may procure same, wherever available, at the non-complying party's expense, and the non-complying party shall pay the cost thereof, and such other costs incurred by such party in connection therewith, including without limitation, its reasonable attorney's fees, on demand as compensation.

(b) Every policy of insurance required by this Agreement to be maintained by Tenant or by PRPA shall contain a provision prohibiting cancellation thereof or changes therein without at least thirty (30) days prior written notice to Tenant or to PRPA, and to the Commonwealth at the address designated from time to time in writing by the Commonwealth. Prior to the Effective Date and on each anniversary thereof, each party shall deliver to the other two copies of certificates evidencing each of the insurance policies that it is required to carry under this Article V, and shall upon the written request of the other party deliver two copies of such portions of each such policy providing the insurance herein required to the other party.

(c) All policies required hereunder and any renewals thereof shall be in form satisfactory to PRPA, shall be issued by companies authorized to engage in the insurance business in the Commonwealth or otherwise satisfactory to PRPA, and shall be maintained in full force and effect. Other policies and coverages purchased by Tenant not specifically required by PRPA, including coverages carried in excess of the required minimum, shall be with companies as Tenant deems appropriate. Notwithstanding anything to the contrary in this Agreement, PRPA may satisfy any or all of its insurance coverage obligations herein contained through participation by PRPA in the Commonwealth's insurance or self-insurance programs, so long as the coverage provided thereby is not less than is required by this Agreement.

(d) Tenant shall provide such additional types of insurance in such amounts as PRPA shall reasonably require with a view to a change in the nature of the Terminal, or the use to be made thereof by Tenant. In the event such additional insurance is required, Tenant shall deliver two certificates of each policy to PRPA and shall upon PRPA's written request deliver two copies of such portions of each policy providing such insurance to PRPA. PRPA shall investigate the possibility and feasibility of its obtaining for the account and at the expense of Tenant certain types of insurance required to be maintained by Tenant under this Agreement.

(e) Tenant agrees not to use the Terminal in any manner that will result in the cancellation or increase in cost of any insurance policy that PRPA or Tenant is required to carry hereunder.

5.8 **Accident Reports.** Tenant shall provide a report to PRPA, in writing, within seven (7) days after Tenant, its officers, or agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of Twenty Thousand Dollars (\$20,000) to property (other than cargo) of any person other than Tenant and PRPA,



occurring upon or about the Terminal. All such reports shall include, to the extent available and appropriate, (1) the names and address of the persons involved; (2) a general statement as to the nature and extent of the injury or damage; (3) the date and hour of the occurrence; (4) the names and addresses of witnesses; and (5) such other information reasonably requested by PRPA as may be known to Tenant, its officers or agents.

5.9 **Liability for Damage Caused by Third Parties.** Tenant shall maintain the necessary security on the Terminal to assure that the Terminal is not being used by anyone not having the permission of Tenant or PRPA. Tenant is and shall be liable (a) for all damage to the Terminal not insured against under Section 5.1 or with respect to which a waiver of subrogation is not being carried pursuant to Section 5.6, and (b) for all damage to the Terminal up to the amount of any deductible of any insurance policy required to be maintained under Section 5.1, which damage is caused by third parties not authorized to be upon the Terminal, or by Tenant, Tenant's employees, agents, contractors, invitees, or licensees.

5.10 **Event of Loss.** In the event of loss to the Terminal or PRPA Cranes, Tenant shall give notice thereof as soon as practicable to PRPA, and PRPA may make proof of loss if not made promptly by Tenant; any adjustment of a proof of loss shall require the prior written consent of PRPA. Each insurance company issuing any property insurance policies in respect to the Terminal is hereby authorized and directed to make payment under such insurance directly to PRPA instead of to Tenant and PRPA jointly, and Tenant appoints PRPA, irrevocably, as Tenant's attorney-in-fact to endorse any draft therefor; provided, that notwithstanding the foregoing, proceeds of insurance required under Section 5.1(b) or Section 5.1(c) (except for proceeds of insurance for a loss to PRPA Cranes), and extra expense insurance proceeds, shall be paid directly to Tenant. Such policies of property insurance and all renewals thereof are hereby

assigned to PRPA as additional security for Tenant's performance of its obligations hereunder, and Tenant agrees that after default hereunder any values available thereunder upon cancellation or termination of any of said policies or renewals, whether in the form of return of premiums or otherwise, shall be payable to PRPA as assignee.

5.11 **Insurance Audit.** On the third anniversary of the Effective Date and every three years thereafter during the Term and any Renewal Period, Tenant and PRPA shall cause an insurance audit to be conducted jointly by their respective insurance consultants to determine the adequacy and availability at commercially reasonable rates of the types of insurance and the amounts of coverages then being carried by either of them. In the event PRPA's and Tenant's insurance consultants are unable to arrive at mutually agreeable recommendations as a result of the insurance audit required under this Section 5.11, the parties agree that they will submit such dispute to the Arbitrators, and the decision of the Arbitrators shall be final and binding upon the parties. Tenant and PRPA agree that promptly following such insurance audit or the resolution of any dispute, this Article V shall be amended to conform to the recommendations of the insurance audit, and PRPA and Tenant shall promptly obtain and maintain such insurance of such amounts as this Agreement, as so amended, shall require.

5.12 **Indemnification.**

(a) Tenant hereby covenants and agrees to indemnify, defend and hold PRPA and the Commonwealth harmless from any and all liability, loss, cost or expense, claims, and/or suits for, or by reason of, any injury, loss or damage to any person or property occurring on the Terminal from a condition caused by or for which Tenant is responsible under the terms of this Agreement, or arising out of Tenant's use of or operations at the Terminal, whether the loss, injury or damage be to the person or property of Tenant or any other person, except to the extent



due to PRPA's failure to fulfill its obligations or responsibilities under this Agreement or to the negligence of PRPA, or the Commonwealth, and their respective agents, contractors, employees, lessees, invitees or licensees.

(b) The indemnification obligations of Tenant under this Section 5.12 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Tenant or any of its employees under workers' compensation acts, disability benefits acts or other employee benefits acts.

(c) The provisions of Section 5.12(a) shall not apply to any matter insured against under Section 5.1 and as to which a waiver of subrogation is in effect or to any matters covered by the subject matter of Article X.

(d) The indemnifications given in this Section 5.12 shall survive the expiration or termination of this Agreement.

## ARTICLE VI

### REPAIRS AND MAINTENANCE

#### 6.1 PRPA's Obligations.

(a) PRPA shall maintain the structural integrity of and shall repair the roof, exterior walls, floors, foundations, pavements and pilings of all Terminal buildings and structures, maintain and repair the structural integrity of the Wharf Structure, as hereinafter defined, maintain and repair the mooring capstans and the fendering system perform exterior painting required to preserve all such buildings and structures, perform any necessary maintenance and repairs to any perimeter fencing on the Terminal, and perform any required structural maintenance and repairs as distinguished from nonstructural maintenance and repairs, all when not caused by Tenant, its employees, agents, contractors, invitees or licensees (normal wear and tear excepted) and as PRPA reasonably shall determine, taking into account among

other things, the operational needs of the Terminal. PRPA shall determine the type of fendering system to be employed at the Terminal. PRPA shall also perform structural maintenance of and repairs to the underground systems of water, sewer and electric utilities upon the Terminal. PRPA's obligations hereunder shall include maintenance and repairs of the scales and track, including switches, on the Terminal and the furnishing and maintenance of safe berths, including moorage and approaches to the berths as PRPA reasonably shall determine. PRPA shall be responsible for any necessary repair or replacement of any electrical transformers on the portions of the Terminal other than the Additional Parcels. Notwithstanding anything to the contrary contained herein, neither Tenant nor PRPA shall be required to maintain, repair or replace the electrical transformers currently servicing Shed 98. Except as expressly provided in this Agreement, PRPA shall not be obligated to make any repairs, alterations, additions or betterments to the Terminal during the Term hereof. PRPA's obligation to maintain and repair as described above shall be deemed to required PRPA to maintain and repair those portions of Terminal for which it is responsible in their "as is" condition as of the Effective Date or their repaired or upgraded condition with respect to those matters which are repaired or upgraded by PRPA as a result of and following the terms of this Agreement. Notwithstanding anything to the contrary contained herein, PRPA shall have no responsibility to maintain, repair or replace the Additional Parcels or any improvements thereon, other than any obligation of PRPA set forth in Article X.

(b) If PRPA fails to perform any of its obligations of maintenance, painting, or repair under this Section 6.1, then Tenant, at its option, if PRPA fails to perform or to commence in good faith to perform (and thereafter diligently to perform) any such obligation after having received, in the case of an emergency requiring prompt attention in order to prevent



danger to life or serious property damage, 24 hours, and in the case, of other matters, 72 hours written notice from Tenant, and if PRPA provides its written approval of the specific action proposed to be undertaken by Tenant, then Tenant shall be permitted but shall not be obligated to perform such maintenance, painting or repair, and Tenant shall be reimbursed for the reasonable cost thereof, provided that Tenant shall not be reimbursed for any such costs in excess at any time of \$100,000. Costs incurred by Tenant and eligible for reimbursement hereunder shall be reimbursed as follows: Tenant shall be entitled to a credit in an amount up to fifty percent (50%) of all Base Compensation payable to PRPA by Tenant in that month, until such time as all amounts to which Tenant is entitled to reimbursement under this Section 6.1 have been repaid in full. Any notice or approval given pursuant to this Section 6.1(c) shall be delivered in accordance with the provisions of Section 28.1 in respect of emergencies. In the event PRPA fails to provide Tenant notice of PRPA's approval or disapproval of any course of action proposed to be undertaken by Tenant pursuant to this Section, within, in the case of an emergency requiring prompt attention in order to prevent danger to life or serious property damage 24 hours, and otherwise 72 hours, of PRPA's receipt of Tenant's notice, PRPA's approval of such proposed course of action shall be deemed granted.

(c) PRPA agrees that for the purposes of this Agreement, unless specifically stated otherwise, the duty to repair an item includes, in the event such item becomes inoperable, the duty to replace such item with an operable item of like kind.

## **6.2 Tenant's Obligations.**

(a) (i) Tenant shall, at all times, keep the Terminal in a neat, clean and orderly condition. Tenant shall perform all nonstructural maintenance and repair, including without limitation sweeping, snow removal, trash removal, all interior painting, traffic or terminal

striping, relamping of Terminal lights, replacing light bulbs, cleaning closed drains, daily janitorial service, storm drain inlet maintenance and repair, rolling and sliding door maintenance and repair, Terminal electrical signage maintenance and repair (excluding electrical signs installed after the effective date of First Amended Lease Agreement by PRPA), Gatehouse equipment maintenance and repair, carpet, tile and vinyl floor replacement, and shall be responsible for security in and about the Terminal. Tenant shall be responsible for any necessary maintenance of all electrical transformers on the Terminal. Tenant shall use every reasonable precaution against fire. Tenant shall perform aboveground maintenance and repair (except the repair and replacement of electrical transformers on portions of the Terminal other than the Additional Parcels) of water, sewer and electric utilities upon the Terminal. Notwithstanding anything to the contrary contained herein, neither Tenant nor PRPA shall be required to maintain, repair or replace the electrical transformers currently servicing Shed 98. Tenant shall be liable, at its own expense, to make all repairs to windows, irrespective of cause. Tenant shall be responsible for and shall repair all damage to the Terminal within a reasonable period of time following the occurrence of damage. Tenant shall not be obligated to repair any damage to the Terminal caused by PRPA, its employees, agents, contractors, invitees, licensees, or lessees (other than Tenant). Tenant's obligations hereunder shall be to maintain and repair those elements of the Terminal for which it is responsible in the condition they were in at the commencement of Tenant's possession with respect to the applicable portion of the Terminal (the "**Tenant Possession Date**"); provided, that upon any repair or upgrading of such element by PRPA in accordance with Sections 7.6 or 7.7, Tenant shall maintain and repair such elements for which Tenant is responsible in their repaired or upgraded condition, reasonable wear and tear excepted. The "Tenant Possession Date," as used in this Agreement, means the Effective Date.



(i) Notwithstanding anything to the contrary contained herein, except with respect to damage caused by Tenant, its agents or invitees, Tenant's maintenance and repair obligations with respect to the Additional Parcels shall be to maintain and repair the Additional Parcels to a level commensurate with the use thereof by Tenant, provided that in the event of such use such maintenance and repair shall always be performed to a level sufficient to comply with all applicable laws and regulations with respect to the health and safety of persons. Tenant shall indemnify, defend and hold PRPA harmless from and against any and all expense, loss, claim, suit or liability suffered by PRPA as a result of death or injury to person, or property damage occurring on or about the Additional Parcels, even if such death, injury or property damage is due in part to the negligence of PRPA with respect to the current or future condition of the Additional Parcels (except as to a future condition caused by an affirmative negligent act of PRPA), the negligence of the Commonwealth, or their respective agents, contractors, employees, lessees, invitees or licensees. The indemnification obligation of Tenant under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Tenant or any of its employees under workers' compensation acts, disability benefits acts, or other employee benefits acts.

(b) In the event any alterations or improvements shall be made by Tenant which can easily be removed without damage to the Terminal, or trade fixtures installed by Tenant which can be removed without injury to the Terminal, such alterations, improvements or trade fixtures shall remain the property of Tenant, and upon the expiration or termination of this Agreement Tenant may remove the same within the Tenant Equipment Removal Period, provided that Tenant shall repair and restore any damage to the Terminal caused thereby. Any such alterations, improvements or trade fixtures which are not removed by Tenant from the

Terminal within the Tenant Equipment Removal Period shall be and remain the property of PRPA. It is expressly agreed that the Tenant Cranes are fixtures, but Tenant shall nevertheless have the right and obligation to remove the Tenant Cranes after the termination of this Agreement as provided in Section 7.4. Tenant agrees that if and when any repairs, alterations, additions or betterments shall be made by it as provided in this Section 6.2, it promptly shall pay for all labor done or materials furnished and shall keep the Terminal free of all liens and shall comply with the applicable provisions of Article VII.

(c) Tenant agrees that for the purposes of this Agreement, unless specifically stated otherwise, the duty to repair an item includes, in the event such item becomes inoperable, the duty to replace such item with an operable item of like kind.

6.3 **Wharf Structure**. Notwithstanding anything to the contrary in this Agreement, if damage to the Wharf Structure or is caused by the acts of or failure to act by Tenant, its officers, employees, agents, contractors, invitees, or licensees, including persons performing work on the Terminal at the request or under the direction of Tenant, PRPA may make all necessary repairs and Tenant agrees to reimburse PRPA for all such costs incurred by PRPA upon presentation of supporting documentation by PRPA to Tenant to the extent such costs are not covered by insurance. For the purposes of this Agreement, the “**Wharf Structure**” shall mean and be defined as the beams, girders, subsurface support slabs, and pre-stressed concrete or wood piling located between the pier head line and the bulkhead line and any and all mooring dolphins that service the berths at the Terminal. The Wharf Structure shall not include the surface paving at the Terminal.

6.4 **Fire Systems**. All fire protection sprinkler systems, fire hydrant systems, standpipe systems, fire alarm systems, portable fire extinguishers and other fire protective or



extinguishing systems or appliances which have or may be installed on the Terminal shall be maintained and repaired by Tenant in an operational condition and in accordance with all applicable laws at all times. All repairs and servicing shall be made by Tenant in accordance with all applicable laws and in accordance with the recognized standards relating thereto. Tenant shall cause a sprinkler system maintenance and inspection service, each as approved by the agency having jurisdiction over same and by PRPA, in its reasonable judgment, to carry out, respectively, systematic inspection, adjustment and maintenance, to the extent required by law, and to furnish reports of each such inspection to PRPA. At Tenant's sole cost and expense Tenant shall provide remote monitoring of the fire protection system. In the event the fire protection system must be replaced or overhauled in PRPA's reasonable judgment, or if the system must be replaced as a result of legislative action, PRPA shall, at its sole cost and expense, cause the system to be replaced or overhauled, as appropriate.

6.5 **Load Limits.** Tenant shall not place loads on the Terminal in excess of the maximum load limits which are set forth in the certification of PRPA's engineer which are attached hereto as **Exhibit H** and made a part hereof, without the prior written consent of PRPA. Tenant acknowledges receipt of the Hudson Engineers report on the load capabilities of the Additional Parcels and agrees to consult with PRPA concerning uses that may adversely affect the structural integrity of the Additional Parcels. The parties agree that the use of the Terminal as of the Effective Date shall not be deemed to constitute a breach of this **Section 6.5** or **Exhibit H**, anything herein or therein to the contrary notwithstanding.

6.6 **Maintenance and Servicing of Cranes.**

(a) For purposes of this Section, Cranes shall collectively mean PRPA Cranes & the Tenant Cranes. During the Term hereof, Tenant shall at its own cost and expense provide

crane operators to provide for the operation of the existing Cranes at the Terminal and any additional Cranes installed at the Terminal. Tenant shall contract with an independent crane maintenance contractor acceptable to PRPA, in its reasonable judgment, to maintain and service the Cranes or undertake such maintenance and service by itself, including without limitation the observance of the manufacturers' recommendations (except to the extent that Tenant demonstrates to PRPA's reasonable satisfaction that certain of such recommendations are inapplicable or have been satisfied by alternative measures), subject in all cases to ordinary wear and tear. Crane maintenance personnel shall be fully trained and qualified to perform such services. If requested by PRPA, maintenance reports shall be submitted to PRPA by Tenant not less frequently than quarterly. PRPA shall not be liable for the actions of any crane operator, crane maintenance contractor, or the employees of either of them. For purposes of this Agreement, the term "Cranes" shall be construed to mean any existing and future cranes installed by Tenant at Terminal from time to time.

(b) PRPA shall not be liable for any claims, liabilities, costs and expenses, including, without limitation, consequential and incidental damages, arising out of or caused by a breakdown of the Cranes or their being out of service for any reason whatsoever (except to the extent caused by PRPA's failure to perform its obligations hereunder), and Tenant hereby releases PRPA from any such liability.

#### **6.7 Dredging.**

(a) During the Term hereof and any Renewal Period, PRPA shall, at its sole cost and expense, and at such times as it reasonably determines necessary taking into account the soundings referred to in Section 6.7(b), and upon its obtaining all necessary permits and approvals (which PRPA will pursue in a commercially reasonable manner), conduct maintenance



dredging alongside Berths #1, #2, #3, #4 and #5 to a depth of forty-two (42) feet from Mean Low Water Datum (“**MLWD**”) until such time Berths #1, #2, #3, #4 and #5 are dredged to a depth of forty-five (45) MLWD and then the maintenance dredging depths for Berths #1, #2, #3, #4 and #5 will be to a depth of forty-five (45) MLWD, and alongside Berth #6 to a depth of thirty-eight (38) feet from MLWD. Upon the presentation by Tenant to PRPA of reasonable evidence illustrating a reasonable, current business need, PRPA shall, upon its obtaining all necessary permits and approvals (which PRPA will pursue in a commercially reasonable manner), dredge alongside Berth #6, to the extent of such demonstrated need, to a depth of forty (40) feet from MLWD. PRPA shall conduct maintenance dredging to a depth of forty (40) feet from MLWD alongside any such depth so long as a reasonable, current business need exists for such a depth to be maintained. PRPA will cause Berths #1, #2, #3, #4 and #5 to be dredged to a depth of forty-five (45) from MLWD no later than the sooner to occur of: (i) the date that the channel shall be dredged to depth of forty-five (45) from MLWD; or (ii) the Substantial Completion Date.

(b) During the Term of this Agreement, Tenant, at its cost and expense, shall cause a reputable engineering company to perform soundings alongside Berths #1 through #6 at Terminal and shall make the results of such soundings available to PRPA. Tenant shall cause such soundings to be made periodically during the Term as Tenant determines is necessary, but in any event Tenant shall cause such soundings to be made at least once per year during the Term of this Agreement.

6.8 **Access.** PRPA, its contractors, invitees and their respective employees shall have the right of access to the Terminal to perform their respective duties, responsibilities and jobs as contemplated under this Article VI and to determine the state of maintenance and repair. PRPA will schedule such access, to the extent possible, so as to not unduly interfere with any terminal

operations. PRPA shall, at its expense, make all improvements and repairs to the Terminal for which it is responsible within a reasonable period of time and shall be responsible for all damage to cargo, containers and all other property of others located on the Terminal when such repair is necessitated by or damage is caused by the negligent or wrongful acts of PRPA or its employees, agents, contractors, lessees, invitees or licensees.

6.9 **PRPA's Rights.** Should Tenant fail to make any repairs or perform any maintenance for which it is responsible, including without limitation any repair or maintenance to the Cranes, PRPA shall have the option to make or perform the same if Tenant fails to do so after having received thirty (30) days written notice from PRPA or immediately if in PRPA's reasonable business judgment the repairs required must be made to prevent further damage, injury or loss. Upon receipt of an invoice together with supporting documentation, as appropriate, from PRPA, Tenant shall promptly reimburse PRPA for the reasonable cost thereof. The making of such repairs by PRPA shall in no event be construed as a waiver of the duty of Tenant to make repairs as herein provided.

## **ARTICLE VII**

### **EQUIPMENT; CAPITAL IMPROVEMENTS**

7.1 **Provision.** Throughout the Term Tenant shall provide, by lease or purchase, at its sole cost and expense, adequate computer hardware and software systems for monitoring and coordinating its operations conducted at the Terminal. Tenant shall provide the equipment necessary for the efficient operation of the Terminal, including without limitation all container handling equipment such as tractors, fork lifts, chassis, and top loaders, except PRPA Cranes, which shall be provided by PRPA.

7.2 **Required Equipment.** Any modification, improvement, or addition to the Terminal, and any equipment installation or system modification required by the



Commonwealth's Department of Labor and Industry, the U.S. Coast Guard, the U.S. Environmental Protection Agency, or any other applicable local, regional, state or federal agency ("**Required Equipment**") as a result of any modification, improvement, or addition to the Terminal or an equipment installation or system modification made by Tenant shall be constructed, installed or made by Tenant, at Tenant's sole cost and expense, in accordance with all rules of such requiring agency. Any Required Equipment necessitated by a change in the laws or regulations of such requiring agency or as a result of any other improvements made by PRPA shall be construed or installed by PRPA, at PRPA's sole cost and expense, in accordance with all rules of such requiring agency.

### 7.3 **Tenant Cranes.**

(a) The cranes presently on the Terminal (until such time, if any, that it is purchased by PRPA) listed on **Exhibit G** attached hereto as being owned by Tenant, and all other cranes that Tenant may purchase or install at the Terminal from time to time during the Term are collectively hereunder referred to as the "**Tenant Cranes.**" The Tenant Cranes shall be and remain at the Terminal until the expiration or termination of the Term and all exercised Renewal Periods subject to **Section 2.5(c)**. If Tenant, during the Term of this Agreement or any renewals thereof, provides any additional or replacement container cranes to the Terminal, such cranes shall also be deemed to be Tenant Cranes and shall be subject to the same terms and conditions applicable to the Tenant Cranes as set forth herein.

7.4 **Ownership of Tenant Cranes and Equipment.** Except for the crane that PRPA will purchase as identified on Exhibit F & G, the Tenant Cranes and all other equipment provided by Tenant (including, without limitation, that equipment described in **Sections 7.1** and **7.2**) shall be and remain the property of Tenant. Upon the expiration or termination of this

Agreement (except when Tenant terminates this Agreement for cause and a court having jurisdiction has determined that PRPA, at the time of such termination, was in default of this Agreement beyond any applicable cure period) PRPA shall have the option to purchase any one or more of the Tenant Cranes at their fair market value and on other mutually agreeable terms. In the event PRPA elects to purchase one or more Tenant Cranes pursuant to this Agreement, Tenant shall deliver good title to each such Tenant Crane, free and clear of all liens, encumbrances and security interests. PRPA shall exercise such option, if at all, by giving written notice thereof to Tenant not less than one hundred fifty (150) days prior to the end of the initial Term or the last Renewal Period as to which Tenant timely exercised its option to renew, or simultaneously with any notice to terminate this Agreement given by PRPA, as applicable. If Tenant and PRPA are unable to mutually agree upon the fair market value of and other terms relating to any Tenant Crane(s) which PRPA has notified Tenant of PRPA's desire to purchase in accordance with this Section 7.4, within thirty (30) days of PRPA's delivery of such notice to Tenant, then PRPA's option to purchase such Tenant Crane(s) shall terminate. To the extent that PRPA elects not to exercise its option to purchase any Tenant Crane, Tenant shall remove, at its sole cost and expense, any of the Tenant Cranes that PRPA did not elect to purchase. Immediately upon notification by PRPA of its election not to purchase any one or more of the Tenant Cranes, Tenant shall commence and diligently conduct the removal of any Tenant Crane not purchased by PRPA in accordance with this Section and Section 2.5. The parties shall cooperate with one another as promptly as possible after the parties have determined that the Tenant Cranes will be removed from the Terminal in arranging a mutually satisfactory schedule and plan (the "Plan") for the dismantling and removal of the Tenant Cranes during the Tenant Crane Removal Period. Such Plan shall take into account the interest of PRPA in operating the



Terminal to the maximum extent commercially reasonable and the interest of Tenant in removing the Tenant Cranes in as expeditious a manner as possible without incurring premium or extra costs. In the event the Tenant Crane removal schedule included within such Plan extends past the last date of the Tenant Crane Removal Period, such Tenant Crane Removal Period shall be deemed extended to the first day after the last work identified on such schedule is scheduled to be completed. In the event a notice to terminate is given less than one hundred fifty (150) days prior to the effective date of such termination, the Tenant Crane Removal Period shall be extended by the number of days by which the date of such notice was less than one hundred fifty (150) days prior to the effective date of such termination. If the parties cannot agree upon such a Plan within fifteen (15) days after it has been determined that one or more of the Tenant Cranes is to be removed, then they shall submit the matter to the Arbitrators, and the decision of the Arbitrators shall be final and binding upon the parties.

**7.5 Tenant's Improvements.**

(a) Tenant, at no cost or expense to PRPA, shall, subject to the provisions of this Section 7.5, construct or reconstruct, or cause to be constructed or reconstructed, certain capital improvements including, initially, the improvements more particularly described on Exhibit F attached hereto (the "Tenant Improvements") at the Terminal and on the Publicker Property during the Term of this Agreement. Tenant will use commercially reasonable efforts to cause the Tenant Improvements described on Exhibit F attached hereto to be constructed promptly and completed not later than ninety (90) days following the date upon which the PRPA Improvements are Substantially Complete.

(b) Approval of Plans. Tenant shall not construct, or cause to be constructed, any Tenant Improvements, nor shall Tenant construct, effect major repairs or restorations of,

alter or demolish, or allow anyone else to do any of the foregoing with respect to, any works, structures or other improvements upon the Terminal, including a change in the grade or filling of a berth thereof, without first submitting to PRPA a complete set of drawings, plans, and specifications and contracts and obtaining PRPA's written approval thereof, which approval shall not be unreasonably withheld, and any other approvals of the Commonwealth, to the extent required, and any approvals required by law. PRPA shall have the right to order changes in said drawings, plans and specifications for reasonable cause and Tenant shall make such changes, or caused such changes to be made, at no expense to PRPA. Tenant shall keep records of all goods, material and labor employed in connection with any such construction and shall make the same available to PRPA at reasonable times upon prior written notice.

(c) Compliance with Applicable Laws. Every work, structure or improvement constructed, or alteration or change of grade made by Tenant shall conform with the plans and specifications as approved by PRPA and any other entity or governmental agency whose approval is required, and shall conform in all respects to the applicable federal, state, regional, and local laws, statutes, ordinances, rules and regulations. The approvals given as provided in this Section 7.5 shall not constitute a representation or warranty as to such conformity and shall not relieve Tenant of its responsibilities with regard thereto.

(d) Cost of Permits. Tenant, at its own expense, shall obtain all permits necessary for such construction and shall require by contract that its contractors and subcontractors comply with all applicable federal, state, and local statutes, ordinances, rules and regulations, and, with respect to any superstructure and/or infrastructure improvements at the Terminal made by or on behalf of Tenant during the Term, the provisions of Section 22.1. PRPA shall cooperate with Tenant with respect to obtaining necessary permits.



(e) Cost of Construction. All construction by Tenant pursuant to this Section 7.5 shall be at Tenant's sole expense. Tenant shall keep the Terminal free and clear of liens for labor and materials and shall hold PRPA and the Commonwealth harmless from any responsibility in respect thereto.

(f) Notices. Tenant shall give written notice to PRPA, in advance, of the date it will commence any construction. Immediately upon the completion of the construction, Tenant shall notify PRPA of the date of such completion and shall, within thirty (30) days after such completion, file with PRPA a statement, verified by an appropriate officer of Tenant, setting forth the cost of the labor and material used. Tenant shall also file with PRPA, in a form acceptable to PRPA, a set of "as built" plans for such construction.

(g) Ownership. All improvements, works and structures made or erected by Tenant upon the Terminal under this Section 7.5 shall be and become the property of PRPA, except as provided in Section 6.2.

(h) Diligence. Tenant will proceed diligently to construct its improvements upon the Terminal without delay, and in a good and workmanlike manner, employing therefor workers and materials satisfactory in quantity and quality to PRPA.

(i) Inspections.

(i) Tenant will permit and assist PRPA or PRPA's representatives to make inspections of the Terminal and Tenant's improvements. Prior to the commencement of any construction by Tenant, Tenant shall provide to PRPA a construction schedule. Tenant and PRPA shall establish an inspection schedule setting forth reasonable and appropriate times for PRPA to make such inspections, although PRPA may choose to inspect more frequently. If upon any such inspection PRPA in writing reasonably rejects as unsound or improper and not in

substantial compliance with the plans any portion of the improvements or any materials used or to be used therein, Tenant will promptly commence to remove from the Terminal or improvements (as the case may be) all rejected materials, and will take down and replace (or, at PRPA's option, repair) any portion of such improvements so rejected.

(ii) PRPA's inspections are solely for PRPA's benefit and no action or inaction by PRPA shall constitute any representation that such improvements comply with the respective plans or that such improvements are sound or free from defects in material, design or workmanship.

(j) Commonwealth. The Commonwealth, by joining in this Agreement for the limited purposes set forth on the signature page hereof, as one of the fee owners of part of the Commonwealth Area and Shed C, consents to the specific construction, repairs, restorations, alterations, demolition and filling of berths by Tenant which PRPA has approved pursuant to this Agreement, and such other matters as PRPA may from time to time approve in the future under this Section 7.5, to the extent required under the Commonwealth Leases or in any other instrument, lease or agreement.

(k) Mechanics' and Materialmen's Lien Waivers. Prior to the commencement of any construction or other performance by a contractor, subcontractor or materialman under a contract with Tenant for improvements at the Terminal, Tenant shall cause a waiver of mechanics' and materialmen's liens from all such contractors, subcontractors and materialmen to be filed in accordance with the Pennsylvania mechanics lien law.

(l) Contractors. In addition to the foregoing requirements, Tenant shall not construct, effect major repairs or restorations of, alter or demolish any works, structures or other improvements upon the Terminal without first obtaining PRPA's written approval of the identity



of the contractor (unless Tenant or a Tenant affiliate acts as the general contractor), which approval shall not be unreasonably withheld. Tenant shall have the exclusive right to salvage any structural steel and other materials from any demolition on the Terminal and use such salvaged materials at that time or in the future in connection with improvements on the Terminal. Tenant hereby releases PRPA from any and all claims arising from or related to the condition of such salvaged materials or any contaminants or hazardous substances that may be contained therein.

**7.6 PRPA's Improvements.**

(a) PRPA Improvements. Subject to the provisions of this Section 7.6, the capital improvements set forth on Exhibit E (the "PRPA Improvements") shall be constructed or reconstructed by PRPA at the Terminal during the Term of this Agreement. The provisions of Exhibit E are incorporated herein by reference and shall be given the same force and effect as if set forth in full in the main body of this Agreement. PRPA shall not be required to expend on any PRPA Improvement more than the maximum cost therefor set forth on Exhibit E. PRPA agrees, however, to use reasonable efforts (i) to raise additional funds to complete PRPA Improvements if the maximum costs set forth on Exhibit E are insufficient, and (ii) if the maximum costs set forth on Exhibit E are exceeded in one or more of PRPA Improvements, to cause the savings, if any, realized on the other PRPA Improvements to be made available to complete PRPA Improvements where such maximum costs were exceeded. The PRPA Improvements and the Tenant Improvements are occasionally hereinafter collectively referred to as the "Capital Improvements."

(b) Timing of PRPA Improvements. PRPA will use commercially reasonable efforts to cause PRPA Improvements to be constructed promptly and completed on or before December 31, 2021.

(c) Effect on Tenant's Operations. Tenant recognizes that its operations will be affected during the time construction or reconstruction of PRPA Improvements is carried out. Tenant agrees that PRPA is not liable for damages resulting from delays in construction or from inability to construct PRPA Improvements except to the extent such delay is caused by any action or inaction by PRPA and such action or inaction is not remedied after notice and opportunity to cure as provided herein. Tenant agrees the completion of PRPA Improvements is not a condition precedent to this Agreement's becoming effective or remaining in effect. PRPA shall use commercially reasonable efforts to see that any work in respect of PRPA Improvements does not unreasonably interfere with any Terminal operations; however, nothing in this Section 7.6(c) shall be deemed to require PRPA to conduct such work at night or at times other than normal business hours except on an occasional basis as necessary to prevent significant interference with terminal operations.

(d) Supervision of Work. Tenant recognizes that PRPA and/or the Commonwealth reserve total control over the design of PRPA Improvements, award of any contracts, and supervision of contractors for work undertaken by PRPA, provided that PRPA shall consult with and take into account the advice of Tenant in the design of PRPA Improvements and the construction thereof. The foregoing sentence shall not be deemed to require PRPA to accept Tenant's advice. During construction of PRPA Improvements, Tenant shall give no orders to any contractors unless first requested or permitted in writing by PRPA to



do so. Tenant agrees to cooperate fully with contractors in providing all necessary access to the Terminal and generally cooperating with contractors.

(c) Commonwealth. The Commonwealth, by joining in this Agreement for the limited purposes set forth on the signature page hereof, as one of the fee owners of part of the Commonwealth Area and Shed C, consents to the construction, reconstruction and demolition by PRPA of certain improvements described in this Section 7.6, to the extent required under the Commonwealth Leases, or any other instrument, lease or agreement.

(f) Mechanics' and Materialmen's Lien Waivers. Prior to the commencement of any construction or other performance by a contractor, subcontractor or materialman under a contract with PRPA for improvements at the Terminal, PRPA shall cause a waiver of mechanics' and materialmen's liens from all such contractors, subcontractors and materialmen to be filed in accordance with the Pennsylvania mechanics' lien law. To the extent that PRPA's properties are exempt from mechanics' and materialmen's liens pursuant to applicable statute, PRPA may, at its option, elect not to cause such waivers to be filed.

**7.7 Substantial Completion Date**. As used herein, the term "Substantial Completion Date" means the earlier of:

(i) the date on which PRPA Improvements have been substantially completed and PRPA has received and accepted a certificate of substantial completion signed by PRPA's general contractor (AIA G704 form or similar form), subject only to corrections for minor punchlist items ("Substantially Complete"); or

(ii) January 1, 2023

## **ARTICLE VIII**

### **UTILITIES**

8.1 **Utilities.** Utility costs including costs of water, electricity, gas, propane, and sewer service and telephone service billed to the Terminal, will be borne by Tenant. Tenant shall pay any such utility costs for which it is responsible with respect to the Terminal when due and payable and prior to the imposition of any late charge or penalty by the supplier of the utility. Tenant shall be solely responsible for any such late charge or penalty.

## ARTICLE IX

### **TAXES**

9.1 **Taxes.** Tenant covenants and agrees to pay all lawful taxes, assessments or charges which may be levied by any federal, state, county, city or any tax or assessment levying agency imposed upon Tenant in connection with Tenant's activities at the Terminal (collectively "**Imposition**"). Tenant shall not permit any tax lien, other than the lien of taxes not yet due and payable, to attach to the Terminal, PRPA's interest therein, the Tenant Cranes or any other property of Tenant on or about the Terminal.

9.2 **Appeals.** Tenant shall have the right to contest or object to the amount or validity of any such Imposition by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying or extending the covenants of Tenant to pay any such Imposition at the time and in the manner provided in Section 9.1, unless Tenant shall have given prior written notice to PRPA of intent to so contest or object to an Imposition, and unless, at PRPA's sole option, (i) Tenant shall demonstrate to PRPA's satisfaction that the legal proceeding shall operate conclusively to prevent the placing of a lien on the Terminal, or any part thereof, to satisfy such Imposition prior to final determination of such proceedings; or (ii) Tenant shall furnish a good and sufficient bond or surety as requested by and satisfactory to PRPA; or (iii) Tenant shall have provided PRPA with a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of such proceedings.



## ARTICLE X

### **ENVIRONMENTAL MATTERS**

10.1 **Environmental Matters.** Tenant represents, warrants and covenants that it shall comply at all times with the following terms of this Agreement relating to environmental matters. Tenant shall not, however, be responsible for any noncompliance to the extent attributable to contamination already existing on the “Tenant Possession Date,” as defined in First Amended Lease Agreement (hereinafter, the “**Original Tenant Possession Date**”); or (ii) contamination caused by PRPA after the Original Tenant Possession Date. Nothing herein shall be deemed to impair Tenant’s right to contest any governmental agency’s orders or directives with respect to environmental matters.

10.2 **Compliance With Law.**

(a) Tenant shall conduct all of its activities at the Terminal in compliance with all statutes, ordinances, regulations, orders, and requirements of common law concerning (i) those activities, (ii) repairs or construction of any improvements, (iii) handling of any materials, (iv) discharges to the air, soil, the Delaware River, or other surface water or groundwater, and (v) storage, treatment, or disposal of any waste at or connected with any activity at the Terminal (“**Environmental Statutes**”). Tenant shall obtain all permits, licenses, or approvals and shall make all notifications and registrations required by Environmental Statutes with respect to operation of the Terminal and its activities at the Terminal. PRPA shall cooperate with Tenant in obtaining such permits, licenses or approvals; such cooperation shall include the provision to Tenant of information in PRPA’s control or possession. Tenant shall at all times comply with the terms and conditions of any such permits, licenses, approvals, notifications, or registrations.

(b) Tenant shall provide to PRPA copies of all of the following, to the extent they pertain to Tenant's operation of or its activities at the Terminal:

(i) applications or other materials submitted to any governmental agency in compliance with Environmental Statutes;

(ii) any notification submitted to any person pursuant to Environmental Statutes;

(iii) any permit, license, approval, or amendment or modification thereto granted pursuant to Environmental Statutes;

(iv) any record or manifest required to be maintained pursuant to Environmental Statutes; and

(v) any correspondence, notice of violation, summons, order, complaint, or other document received by Tenant pertaining to compliance with Environmental Statutes.

(c) Tenant shall promptly comply with any request by PRPA that Tenant:

(i) provide information or access to the Terminal reasonably necessary to enable PRPA to demonstrate to a third person or governmental agency that no violation of Environmental Statutes or contamination as defined in this Article X has existed or does exist at the Terminal; or

(ii) provide signatures, acknowledgments, affidavits, or otherwise cooperate in a reasonable manner to reasonable requests by PRPA to obtain any governmental approvals necessary under Environmental Statutes to transfer any interest in the Terminal or to transfer any permit or approval held by PRPA under Environmental Statutes.

### 10.3 Site Contamination.



(a) Tenant shall not cause or suffer contamination of the Terminal, provided, however, that nothing herein shall be deemed to create an obligation on the part of Tenant with respect to (i) contamination already existing before the Original Tenant Possession Date; (ii) contamination caused by PRPA or their respective agents, licensees, lessees or invitees (other than Tenant) after the Original Tenant Possession Date. Tenant shall at all times handle hazardous substances and cause hazardous substances to be handled in a manner which will not cause an undue risk of contamination of the Terminal or the surrounding waters.

(b) For purposes of this Article X and the Agreement, the term “contamination” shall mean the uncontained presence of hazardous substances at the Terminal, or arising from the Terminal which may require remediation under any applicable law.

(c) For purposes of this Article X and the Agreement, “hazardous substances” shall mean “hazardous substances” as defined pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act, “regulated substances” within the meaning of Title I of the federal Resource Conservation Recovery Act, “hazardous substances” or “contaminants” as defined pursuant to the Pennsylvania Hazardous Sites Cleanup Act, “hazardous waste” as defined pursuant to the Pennsylvania Solid Waste Management Act, or any other substances which may be the subject of liability pursuant to the Pennsylvania Clean Streams Law.

10.4 **Other Hazardous or Toxic Material.** Tenant shall not handle or permit the introduction of polychlorinated biphenyls (“**PCBs**”), as defined pursuant to the federal Toxic Substances Control Act, substances containing PCBs, asbestos, or materials containing asbestos, on or onto the Terminal. Should Tenant discover the presence of asbestos or PCBs which were not present prior to the Original Tenant Possession Date, Tenant shall take all steps necessary

promptly to remove and to dispose of those materials in compliance with law. Should Tenant discover the presence of asbestos or PCBs on the Terminal which were present prior to the Original Tenant Possession Date, it shall notify PRPA and the parties shall reach agreement on a remediation plan. PRPA shall bear the cost of implementing any such remediation plan.

10.5 **Disposal and Removal of Waste.** Tenant shall, at its sole cost, through its own forces (if no license is required or if Tenant is properly licensed) or through contract with a reputable, private licensed refuse removal firm, remove and dispose of any waste generated at the Terminal, and for which Tenant is responsible under this Article X, in accordance with all Environmental Statutes.

10.6 **Indemnification by Tenant.** Tenant hereby agrees to indemnify, defend and hold PRPA harmless of, from, and against any and all expenses, loss, or liability suffered by PRPA by reason of (a) Tenant's generation, manufacture, introduction, use, handling, transportation or disposal of hazardous substances. or (b) Tenant's breach of any of the provisions of this Article X, including (but not limited to) (i) any and all expenses that PRPA may incur to comply with any Environmental Statutes; (ii) any and all costs that PRPA may incur in studying or remedying any contamination at or arising from the Terminal; (iii) any and all costs that PRPA may incur in studying, removing, disposing, or otherwise addressing any materials which are the subject of this Article X; (iv) any and all fines, penalties, judgments or other sanctions assessed upon PRPA by reason of a failure of Tenant to have complied with Environmental Statutes; (v) any and all loss of value of the Terminal by reason of (A) a failure of Tenant to have ensured compliance with Environmental Statutes, (B) contamination of the Terminal, or (C) the presence on the Terminal of any other hazardous or toxic materials which



are the subject of this Article X; and (vi) any and all legal and professional fees and costs incurred by PRPA in connection with the foregoing.

**10.7 PRPA Responsibilities.** PRPA hereby agrees to be responsible for and, if required by the Environmental Statutes referred to in Subsections 10.2(a)(iii)-(v) or if it unreasonably interferes with Tenant's use or operation of the Terminal, to promptly remedy (a) any failure by any party to have complied with any Environmental Statutes at or with respect to the Terminal before the Original Tenant Possession Date, (b) the disposal of hazardous substances by or on behalf of PRPA, (c) contamination of the Terminal which existed prior to the Original Tenant Possession Date, and (d) contamination of the Terminal caused after the Original Tenant Possession Date by or on behalf of PRPA. In addition, PRPA agrees that in connection with all new construction and all repairs for which it is responsible, it shall comply with all Environmental Statutes. In the event PRPA breaches the covenants set forth in this Section 10.7, Tenant may, in addition to other damages to which it may be entitled, recover its reasonable attorney's fees attributable to such breach.

**10.8 Inspections.** PRPA and the Commonwealth and their agents may, at reasonable times but without the necessity of notice, enter the Terminal to conduct reasonable inspections, tests, samplings, or other investigations to satisfy itself that Tenant has complied with the provisions of this Article X.

**10.9 Remedies.**

(a) Upon material breach by Tenant of any provision of this Article X, or upon a pattern of less significant breaches, PRPA may at its sole discretion terminate this Agreement by written notice to Tenant, whereupon Tenant shall immediately vacate the Terminal. No breach of any provision of this Article X shall be grounds for termination of this

Agreement unless (i) Tenant has received notice of said breach and (ii) after such notice, Tenant is not proceeding in good faith with all due diligence to bring itself into compliance with this Agreement and to cure any past noncompliance.

(b) The parties recognize that no adequate remedy at law may exist for a breach of this Article X. Accordingly, PRPA may obtain specific performance of any provision of this Article X.

(c) This paragraph shall not be construed to limit any other remedies which PRPA may have against Tenant hereunder, at law or in equity for a breach of this Article X.

10.10 **Survival**. The provisions of this Article X shall survive the expiration or termination of this Agreement. No subsequent modification or termination of this Agreement by agreement of the parties or otherwise shall be construed to waive or to modify any provisions of this Article X unless the termination or modification agreement or other document expressly states in writing.

## ARTICLE XI

### **ASSIGNMENT AND LICENSING**

#### **11.1 Assignment and Subleasing; Transfers of Stock.**

(a) Tenant shall not assign, hypothecate, encumber or transfer this Agreement or any interest herein, in whole or in part, or sublease its interest in the Terminal, in whole or in part (each a "**Transfer**"), to any person or entity (each a "**Transferee**"), nor shall Tenant effect or permit the shareholders of Tenant to effect an issuance, trade, sale, pledge, hypothecation, assignment, or transfer of the capital stock of Tenant (each such transaction is herein call a "**Stock Transaction**") except as specifically permitted hereunder. Except as provided in Section 11.1(c), no Transfer shall be permitted if the Transferee is, and no Stock Transaction



shall be permitted if, as a result thereof, the holder of any capital stock of Tenant would be, one or more of the following:

(1) a reputed member of or associated with organized crime or a criminal syndicate, a convicted felon, a racketeer, or similar disreputable persons or entities which in PRPA's reasonable opinion would tend to cause a substantial number of persons not to want to deal with PRPA or use the Terminal;

(2) a party that has breached a material obligation with PRPA or the Commonwealth;

(3) a person or entity with which the Commonwealth declines to deal as a matter of an authorized Commonwealth public policy as a result of such person's or entity's affiliation with a foreign government; or

(4) in the reasonable opinion of PRPA, as to Transferees only:

(A) not financially and otherwise capable of carrying out in a satisfactory and timely manner all of Tenant's obligations hereunder,

(B) suspect in its capability, willingness or desire to conduct its operations at the Terminal in such a fashion as to maximize the use of the Terminal as set forth in Section 1.6 hereof.

(b) Tenant shall not effect or permit to be effected any Transfer or Stock Transaction without providing PRPA with prior written notice thereof. No such Transfer or Stock Transaction may be effected during the twenty (20) day period following the giving of such notice. If at or before the end of the twenty (20) day period PRPA informs Tenant that, in PRPA's opinion, such Transfer or Stock Transaction will not violate the requirements set forth above, or if PRPA fails to notify Tenant at the end of such twenty (20) day period that such

Transfer or Stock Transaction, in PRPA's opinion, would violate such requirements, then Tenant may close the Transfer or Stock Transaction within the next one hundred twenty (120) or one hundred eighty (180) days, respectively. If the Transfer or Stock Transaction is not closed within such one hundred twenty (120) or one hundred eighty (180) day period, as the case may be, then Tenant shall be required to comply in full with the provisions of this Section prior to closing such Transfer or Stock Transaction. If PRPA notifies Tenant on or before the end of the twenty (20) day period that the intended Transfer or Stock Transaction, as the case may be, in PRPA's opinion, would violate such requirements along with the reason therefor, then Tenant will not close or permit the closing of the Transfer or Stock Transaction for an additional ten (10) days following such notice from PRPA. Nothing herein contained shall be deemed to give PRPA the right to prohibit the closing of any intended Transfer or Stock Transaction which satisfies all of the requirements and other provisions of this Section 11.1.

(c) Notwithstanding that one or more permitted Transfers or Stock Transactions may have occurred, if the Terminal shall cease to be managed by Tenant Management at any time during the Term hereof, such an event shall constitute a material breach of this Agreement. As used in this Lease, the term "Tenant Management" shall mean:

- (1) One or more of the principals of Tenant as of the Effective Date hereof ("**Principals**"); or
- (2) one or more member(s) of the immediate family of one or more Principal(s); or
- (3) an adequate, competent staff of other management personnel which in PRPA's reasonable judgment is comparable in knowledge and skill to the existing management personnel of Tenant at the execution of this Agreement.



(d) The provisions of this Section 11.1 shall not apply to (a) any stock transaction which is incident to the sale of any of the common stock of Tenant to not less than one hundred (100) purchasers in a public offering pursuant to a registration statement filed with the Securities and Exchange Commission ("SEC") and any subsequent resale of such stock on a public market or exchange or sale of common stock permitted by Rule 144 or any comparable rule of the SEC promulgated under the Securities Act of 1933, as amended, or (ii) any stock transaction involving securities which are non-voting (except as a class in matters required by law to be voted upon by the class, except for voting rights permitted upon the occurrence of a certain event or set of facts constitute a failure of Tenant to meet certain financial obligations).

11.2 **PRPA's Assignment and Successors.** PRPA shall have the right to assign, hypothecate, or transfer this Agreement, its interest in and to the Terminal, or any interest in either of the foregoing in whole or in part.

## ARTICLE XII

### **SIGNS AND PUBLICITY**

12.1 **Signs.** No signs or placards of an advertising or promotional nature shall be painted, inscribed or placed in or on the Terminal or any building or structure located thereon without the prior written consent of PRPA, which shall not be unreasonably withheld. Tenant shall be permitted to paint, at its cost and expense, the Tenant logo and corporate name, along with PRPA's logo and corporate name, on the roofs of the sheds, on the gatehouse, and on the Cranes. PRPA agrees promptly to remove or repaint at its cost any sign (other than a sign painted on or attached to a roof of any building, the gatehouse or any Crane at the Terminal) not painted over by Tenant. Tenant agrees to remove promptly and to the satisfaction of PRPA, at the cost and expense of Tenant, upon the expiration or the earlier termination of this Agreement,

any and all signs and placards placed by it upon the Terminal. PRPA agrees that Tenant may display the sign currently located on the Gatehouse.

12.2 **Publicity.** Tenant and PRPA agree to cooperate with each other in advertising, promotion and marketing activities for the Terminal and the Port of Philadelphia.

### **ARTICLE XIII**

#### **DAMAGE TO THE TERMINAL**

13.1 **Damage and Destruction.**

(a) In the event the Terminal or any part thereof, or any PRPA Crane, is damaged or destroyed by fire or other casualty, provided that Tenant is not in default of this Agreement and that no event, occurrence, action or inaction which with the passage of time or giving of notice, or both, would render Tenant in default of this Agreement has occurred and is continuing, PRPA shall, promptly and diligently restore, rebuild and repair the Terminal or PRPA Crane, as the case may be, to the extent of available insurance proceeds, as nearly as practicable to the condition existing immediately prior to such casualty.

(b) Intentionally omitted.

(c) In the event one of the Tenant Cranes, or any part thereof is damaged or destroyed by fire or other casualty, Tenant shall, with reasonable promptness and diligence, restore, rebuild and repair the damaged Tenant Crane to the extent of available insurance proceeds in such a manner to enable the Tenant Crane to operate substantially the same as it operated immediately prior to such damage or destruction.

(d) Intentionally omitted.

(e) Tenant shall be entitled to an equitable reduction of the Base Compensation during any period in which the Cranes or the Terminal or any portion thereof is



not useable by Tenant due to damage or destruction caused by a fire or casualty to which this Article XIII applies.

## **ARTICLE XIV**

### **CONDITION OF TERMINAL AND PRPA CRANES**

14.1 **Condition and Surrender of Terminal.** Except to those items of repair and construction that PRPA herein expressly agrees to undertake, and except as to latent structural defects, Tenant accepts Terminal in its “as is” condition, without any representation or warranty by PRPA. Tenant covenants and agrees that at the expiration of the Term or earlier termination of this Agreement, it will quit and surrender the Terminal with all the improvements thereon in as good state and condition as the same were on the date of substantial completion of PRPA Improvements or, if PRPA Improvements are not completed, the Tenant Possession Date (as herein defined), excepting reasonable wear and tear.

## **ARTICLE XV**

### **WAIVER**

15.1 **Waivers.** No waiver by either party at any time of any of the terms, conditions, covenants or agreements of this Agreement shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof by the proper party. No delay, failure or omission of either party to exercise any right, power, privilege or option arising from any default, nor subsequent acceptance of guarantee then or thereafter accrued, shall impair any such right, power, privilege or option, or be construed to be a waiver of any such default or relinquishment thereof, or acquiescence therein, and no notice by either party shall be required to restore or revive time as of the essence hereof after waiver by the other party of default in one or more instances. No option, right, power, remedy or privilege of either party shall be construed as

being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options or remedies given to PRPA or Tenant by this Agreement are cumulative, and no one of them shall be exclusive of the other or exclusive of any remedies provided by law, and that the exercise of one right, power, option or remedy by PRPA or Tenant shall not impair its rights to any other right, power, option or remedy.

## **ARTICLE XVI**

### **WAIVER OF CLAIMS; TERMINATION BY REGULATORY AGENCY OR COURT DECREE**

16.1 **Waiver of Claims.** Tenant hereby waives any claim against PRPA, the Commonwealth and their officers, attorneys, agents or employees for damage or loss caused by any suit or proceedings initiated by any third parties directly or indirectly attacking the validity of the First Amended Lease Agreement or this Agreement, or any part thereof, or by any judgment or award in any suit or proceedings declaring the First Amended Lease Agreement or this Agreement null, void or voidable, or preventing or delaying the same, or any part thereof, from being carried out. PRPA and Tenant agree to cooperate in good faith in the defense of any such suit or proceeding. Nothing contained in the foregoing shall be deemed to permit any breach by PRPA of its representation and warranty in the first two sentences of Section 1.7.

16.2 **Termination by Regulatory Agency or Court Decree.** If a regulatory agency or a court of competent jurisdiction renders a decision which has become final and which will prevent the performance by PRPA or by Tenant of their respective material obligations under this Agreement, then either PRPA or Tenant may terminate this Agreement by written notice; thereafter all rights and obligations hereunder (with the exception of any undischarged rights and obligations that accrued prior to the effective date of termination and except as otherwise stated herein) shall terminate.



## ARTICLE XVII

### FORCE MAJEURE

#### 17.1 Force Majeure.

(a) Neither party hereto shall be deemed to be in breach of this Agreement by reason of failure to perform any of its obligations hereunder, if and to the extent that such failure is caused by a force majeure, which is a cause beyond the control of such party, such as an act of God, fire, flood, explosion, acts of war, riot, civil disorder, casualty caused by third parties not under the control of the party seeking to invoke the application of this Section, strikes or work stoppages (except such strikes or work stoppages resulting from such party's "unfair labor practices," as that term is used in the National Labor Relations Act) or governmental action. Strikes or work stoppages shall be deemed not to have resulted from a party's unfair labor practices until such time, if any, that there is a final administrative or judicial determination, and no appeal is pending and the time for any such appeal has expired, that the conduct that caused such strike or work stoppage was an unfair labor practice, in which event any reduction in Base Compensation pursuant to Subsection 17.1(b) attributable to the strike or work stoppage caused by such unfair labor practice shall be paid by Tenant to PRPA within thirty (30) days of such determination. If the parties cannot agree upon the amount due pursuant to the preceding sentence, the matter shall be submitted to the Arbitrators, whose decision shall be binding.

(b) The amount of Base Compensation payable by Tenant hereunder and Breakbulk Guarantee shall not be affected by an event of force majeure except that if and to the extent that an event of force majeure materially adversely affects the ability of Tenant to conduct maritime operations at the Terminal or the ability of a normal volume of vessels to use the Terminal, the Breakbulk Guarantee shall be equitably reduced and, in recognition of PRPA's reliance on the payment of such sums to meet its operating budget, the Base Rent shall be

reduced by fifty percent (50%) of what would, in the absence of this Subsection, be an equitable reduction. If the parties cannot agree upon the reductions, if any, pursuant to this Subsection, the matter shall be submitted to the Arbitrators, whose decision shall be binding. Adjustments to the Shortfall Fee will be made, if at all, only in accordance with Section 3.1(c) hereof.

## ARTICLE XVIII

### TENANT'S COVENANTS

18.1 **Tenant's Further Covenants.** Tenant further covenants that Tenant shall:

(a) Conduct all operations of Tenant at the Terminal in accordance with Section 1.4, including without limitation, the guidelines of the United States Coast Guard, if any, and all other applicable local, state and federal ordinances, statutes and regulations;

(b) Cause a boiler and machinery inspection service approved by the agency having jurisdiction over same, to make such inspections and certifications as are required by the Boiler and Unfired Pressure Vessel Regulations of the Pennsylvania Department of Labor and Industry, and furnish all reports of such inspections and all certifications resulting therefrom to PRPA;

(c) Not remove, attempt or manifest any intention to remove any property from the Terminal other than in the ordinary course of business;

(d) Not vacate or permit the Terminal to be abandoned, nor cease operation of its business at the Terminal; and

(e) Not permit to remain, and promptly discharge (in no event later than thirty (30) days following the earlier of notice of filing by lien or any notice from PRPA), at its cost and expense, all liens and charges upon the Terminal or any part thereof arising by reason of any labor or materials furnished or claimed to have been furnished to or on behalf of Tenant (except if furnished by PRPA), its employees, agents, contractors, invitees or licensees (except other



stevedoring companies) or by reason of any construction, alteration, addition, repair or demolition of any part of the Terminal by or at the direction of Tenant, its employees, agents, contractors, invitees, or licensees. PRPA shall have, and is hereby given, authority to enter upon the Terminal at any reasonable time to post any notices in a reasonable manner and at reasonable places which in its opinion shall be necessary to hold PRPA and the Commonwealth harmless from any claim or liability arising out of any work done on the Terminal by Tenant or at Tenant's direction. Notice is hereby given that PRPA and the Commonwealth will not be liable for any labor, services or materials furnished or to be furnished by Tenant, or to any one holding the Terminal through or under Tenant, and that no mechanic's or other such lien for any such labor or materials shall attach to or affect the interest of PRPA in and to the Terminal.

18.2 **Conditions.** All of Tenant's covenants, agreements and provisions contained in this Agreement shall be deemed to be conditions of this Agreement, subject to applicable periods of grace and for cure.

## ARTICLE XIX

### **REMEDIES; ARBITRATION**

19.1 **PRPA's Remedies.** If Tenant fails to pay in full when due any installment of Base Compensation or any other charge, expense or cost to be paid by Tenant under this Agreement, or otherwise fails to perform, violates or otherwise breaches any covenant or condition of Tenant in this Agreement, or fails to comply with any notice given under the terms of this Agreement, then, subject to Section 19.1(d) below:

(a) This Agreement, and the term hereby created, shall at the option of PRPA terminate and become absolutely void without any right on the part of Tenant to save the forfeiture by payment of Base Compensation due, or by other performance of the condition violated. When the Agreement shall be so determined, and also, when and as soon as the term

hereby created shall have expired, it shall be lawful for any attorney, as attorney for Tenant, to sign an agreement for entering in any competent court an amicable action and judgment in ejectment, without any stay of execution or appeal, against Tenant and all persons claiming under Tenant for the recovery by PRPA of possession of the Terminal, for which this Agreement or a copy hereof shall be a sufficient warrant, whereupon, if PRPA so desires a writ of possession may issue forthwith without any prior writ or proceedings whatsoever. And, if for any reason after such action has been commenced, the same shall be discontinued and possession of the Terminal remain in or be restored to Tenant, PRPA shall have the right in any subsequent defaults to bring one or more further amicable actions in the manner and form as hereinbefore set forth, to recover possession of the Terminal for such subsequent default. No such termination of this Agreement nor recovering possession of the Terminal shall deprive PRPA of any remedies or action against Tenant for all arrears of Base Compensation or for damages for the breach of any covenant herein contained, nor shall the bringing of any such action for Base Compensation, or breach of covenant, nor the resort to any other remedy herein provided for the recovery of Base Compensation and of other monies due hereunder or for damages for breach of covenant be construed as a waiver of the right to insist upon the forfeiture and to obtain possession in the manner herein provided.

(b) PRPA may, at its option, sublease the Terminal as agent of Tenant for the balance of the Term of this Agreement and receive the Base Compensation therefor and apply the same to the payment of any Base Compensation or damage for breach of covenant due by Tenant to PRPA under the terms hereof.

(c) In addition to the foregoing remedies, PRPA cumulatively shall have all rights, remedies, powers and privileges afforded from time to time by law or in equity.



(d) In the event of any default or breach of covenant by Tenant, PRPA shall, except as provided in the following sentence, give written notice thereof to Tenant, and Tenant shall have a period of ten (10) days after receipt of such written notice to cure any monetary breach, including but not limited to replenishment of the Security Deposit, and Tenant shall have a period of thirty (30) days after receipt of such written notice to cure any other alleged default or breach of this Agreement. PRPA agrees that it will not exercise any remedy for default or breach hereunder, including applying any portion of the Security Deposit described in Section 3.2 hereof in respect thereof, until after the expiration of the appropriate period, and further agrees that it will not exercise any such remedy against Tenant if within the appropriate period Tenant (i) cures the default or breach, or (ii) with respect to defaults or breaches other than the nonpayment of Base Compensation and the failure to replenish the Security Deposit, commences action in good faith within said thirty (30) day period to cure the default or breach of covenant and proceeds diligently and within a reasonable period of time to effect and complete a cure; provided, however, that PRPA shall not be required to provide any notice or cure period for monetary default more than three (3) times in any twelve (12) month period.

(e) In exercising any power conferred under this Agreement, either by the entry of an appearance, amicable action or by the entry of judgment in ejectment by confession, Tenant agrees that if a true and correct copy of this Agreement be filed in such proceeding, it shall not be necessary to file the original as a warrant of attorney, any law or rule of court to the contrary notwithstanding.

(f) Any power herein given to enter an amicable action or to appear for and confess and enter judgment in ejectment against Tenant shall be exercisable any number of times

and shall not, under any circumstances, be exhausted by one or more uses thereof. Such power may be exercisable on behalf of any assignee of PRPA.

(g) Tenant hereby waives, to the extent any such right may be applicable, the right to three (3) months and fifteen (15) or thirty (30) days' notice required under certain circumstances by the Pennsylvania Landlord and Tenant Act of 1951, as amended, and the benefit of all laws now or hereafter in force with respect to notices to be provided under this Agreement and hereby agrees that the respective notice periods provided for in this Agreement shall be sufficient in any such case.

(h) In creating the warrant of attorney to confess judgment in ejectment, Tenant represents and warrants that it knowingly, intentionally and voluntarily, and on the advice of its separate counsel, has agreed to such remedy and any rights granted thereby to PRPA.

(i) For purposes of the remedies under this Agreement, the term "amicable action" shall include the procedure for complaint in confession of judgment in ejectment and other procedures for entering judgment by confession in ejectment under Pennsylvania Rules of Civil Procedure.

19.2 **Remedies Cumulative.** All of the remedies herein given to PRPA and all rights and remedies given to it by law, shall be cumulative and concurrent. No termination of this Agreement or the taking or recovering of the Terminal shall deprive PRPA of any of its remedies or actions against Tenant for all arrears of Base Compensation or for damages, or for the breach of any covenant herein contained, nor shall the bringing of any action for arrears of Base Compensation or breach of covenant, or the resort to any other remedy herein provided for the recovery of arrears of Base Compensation be construed as a waiver of the right to obtain possession of the Terminal.



19.3 **Expedited Proceedings.** Each of PRPA and Tenant agree that, if any action is commenced under this Agreement, it will join with the other party in a motion for the imposition of expedited schedules, including without limitation expedited discovery not subject to the customary time periods for responding to discovery requests and for an expedited hearing on the merits, and that it will not oppose any motion by the other party for the imposition of expedited schedules for the disposition of the action, provided that all substantive rights shall be retained.

19.4 **Notice and Grace Period.**

(a) In the event of any default or breach of covenant or condition of this Agreement by PRPA, Tenant shall give written notice thereof to PRPA, and PRPA shall have a period of ten (10) days after receipt of such written notice to cure any monetary breach, and PRPA shall have a period of thirty (30) days after receipt of such written notice to cure any other alleged default or breach of this Agreement. Tenant agrees that it will not exercise any remedy for default or breach of this Agreement by PRPA until after the expiration of the appropriate period, and further agrees that it will not exercise any remedy against PRPA if within the appropriate period PRPA (i) cures the default or breach, or (ii) with respect to defaults or breaches other than the nonpayment of money, commences action in good faith within said thirty (30) day period to cure the default or breach and proceeds diligently and within a reasonable period of time to effect and complete a cure; provided, however, that Tenant shall not be required to provide any notice or cure period for monetary default more than three (3) times in any twelve (12) month period, and provided further that, notwithstanding anything to the contrary in this Section 19.4(a), notices to PRPA and opportunities to cure in the event of certain wrongful evictions of Tenant by PRPA shall be governed by Section 19.4(b).

(b) In the event of wrongful eviction of Tenant from all or a portion of the Terminal by reason of (i) the willful act of PRPA, or (ii) the quality of PRPA's title in and to the Terminal being other than as set forth in this Agreement, notices to PRPA and opportunities to cure shall be governed by this Section 19.4(b). In the event of such a wrongful eviction, Tenant agrees that it shall not terminate this Agreement unless PRPA, within thirty days after notice, fails to cure or, in the event of a wrongful eviction that does not materially interfere with Tenant's operations at the Terminal, commence and proceed diligently and within a reasonable period of time to effect and complete a cure. In the event PRPA willfully and wrongfully evicts Tenant from the entire Terminal or substantially the entire Terminal, Tenant may pursue all remedies available to it (other than termination, which is subject to the second sentence of this Section 19.4(b)), provided Tenant has given PRPA prior or concurrent telephonic notice. In the event of any other wrongful eviction described in the first sentence of this Section 19.4(b), Tenant may pursue all remedies available to it (other than termination, which is subject to the second sentence of this Section 19.4(b)), provided Tenant has given PRPA not less than two (2) hours prior telephonic notice.

#### 19.5 Arbitration.

(a) For disputes subject to arbitration under this Agreement that are not resolved by the parties within five (5) days after either party gives notice to the other of its desire to arbitrate such dispute, the dispute shall be submitted to a panel of three independent individuals knowledgeable in the operation of a marine terminal facility (the "Arbitrators"). Within thirty (30) days of the Effective Date Tenant and PRPA shall each submit to the other the name and address of the person designated by it to act as an Arbitrator. The two Arbitrators so chosen shall promptly following the submission of a dispute to them select a third Arbitrator. In



the event that they are unable to agree upon such appointment within thirty (30) days, or in the case of a dispute which must be decided within thirty (30) days of its submission pursuant to the terms of this Agreement, within five (5) days after the submission of such dispute, then either party, on notice to the other, may request such appointment by the American Arbitration Association (or any organization successor thereto) in accordance with its rules then prevailing, or if the American Arbitration Association (or such successor organization) shall fail to appoint said third Arbitrator within fifteen (15) days after such request is made, then either party may apply, on notice to the other, to the president judge of the Court of Common Pleas of Philadelphia (or any other court having jurisdiction or exercising functions similar to those now exercised by said court) for the appointment of such third Arbitrator. Any dispute submitted to the Arbitrators shall be settled by binding arbitration in accordance with the then prevailing rules of the American Arbitration Association. The decisions and determinations of the Arbitrators shall be binding upon the parties, and may be enforced by appropriate judicial action. Neither party shall challenge any decision or determination of the Arbitrators in any judicial or administrative forum, including without limitation the FMC, either by complaint, petition for investigation or otherwise.

(b) In deciding any issues presented to them, the Arbitrators shall obtain such information as they deem necessary to determine the question at issue, pursuant to such rules and procedures as the Arbitrators shall determine with respect to such question (provided that such rules and procedures are not inconsistent with the then prevailing rules of the American Arbitration Association), on a case by case basis. In addition, the Arbitrators shall obtain such information and consider such factors as required pursuant to other provisions of this Agreement which discuss specific issues being submitted to the Arbitrators. In deciding any issues

presented to them, the Arbitrators shall consider the positions of both parties, and may hear such testimony and argument as they deem advisable and may request written submissions from the parties. The Arbitrators shall determine each such questions submitted to them with all possible speed, and in any event within thirty (30) days following submission to them of such dispute or, within such shorter period of time as may be required pursuant to other provisions of this Agreement, and shall give written notice to the parties of such determination. The arbitration hearings shall be held in Philadelphia, Pennsylvania as frequently as necessary to arrive at a decision within thirty (30) days from the date on which such dispute is submitted to the Arbitrators (or such shorter period as may be required under this Agreement).

(c) Each party shall pay the fees and expenses of the Arbitrator appointed by such party and the fees and expenses of the third Arbitrator and all other expenses (not including attorney fees, witness fees and similar expenses of the parties which shall be borne separately by each of the parties) of the arbitration shall be borne by the parties equally.

(d) Either party may appoint a successor or replacement Arbitrator for such party upon ten days prior written notice to the other party; provided, however, that unless the Arbitrator such replacement Arbitrator replaces has resigned or is unable to participate, no such successor or replacement Arbitrator shall participate in any matter or dispute which is then currently before the Arbitrators for decision. In the event the third appointed Arbitrator resigns or is otherwise unable to participate in future arbitrations, a replacement third Arbitrator shall be selected in the same manner as provided for the selection of the initial third Arbitrator. Any arbitrator shall be an independent party not affiliated in any way with either Tenant or PRPA.

(e) Any fee, obligation or determination of fact dispute decided by the Arbitrators shall relate back to the date determined by the Arbitrators.



## ARTICLE XX

### CONDEMNATION

#### 20.1 Condemnation.

(a) If the entire Terminal is permanently taken under the power of eminent domain, each of PRPA and Tenant shall be entitled to that portion of payment or award, whether in condemnation or amicable proceeding in lieu of condemnation, allocated to their respective leasehold interests, and each shall be entitled to its respective relocation benefits. Subject to the preceding sentence, either party may terminate this Agreement upon a total taking of the Terminal.

(b) If a portion of the Terminal is permanently taken under the power of eminent domain, and upon such partial taking, the Terminal is unsuitable for use as a marine terminal, either party may terminate this Agreement upon such taking. If neither party terminates under the immediately preceding sentence, or if upon such partial taking the Terminal remains suitable for use as a marine terminal, then the Base Compensation shall be equitably adjusted by Tenant and PRPA and Tenant and PRPA shall further modify this Agreement as appropriate. Disputes under this Subsection 20.1(b) shall be submitted to the Arbitrators.

(c) Promptly after the execution of this Agreement, PRPA and Tenant agree to use their best efforts to have the Commonwealth agree to value for purposes of condemnation Tenant's leasehold interest under this Agreement independent and separate from PRPA's leasehold interest in the Commonwealth Area and Shed C, as though Tenant's leasehold interest under this Agreement had been created pursuant to a direct lease between the fee owners of the Terminal and Tenant, and that upon any condemnation Tenant shall be entitled to an award based upon such value.

(d) PRPA hereby waives its right to condemn Tenant's interest in the Terminal.

## ARTICLE XXI

### RAILROADS

#### 21.1 Railroad Tracks.

(a) Tenant and PRPA agrees that any railroad tracks upon the Terminal shall be operated on the Belt Line principle, *i.e.*, all railroads shall have the right to deliver and receive cars to and from the Terminal.

(b) Tenant shall permit railroad service to and from any adjacent or proximate intermodal container transfer terminal ("**ICTF**") over and through the Terminal; provided, however, that (i) Tenant shall cooperate in the scheduling of such service with shippers and the operator of the ICTF, and (ii) no such railroad service shall unreasonably interfere with Tenant's operations on the Terminal.

## ARTICLE XXII

### EMPLOYMENT PRACTICES; DIVERSITY; INTEGRITY

#### 22.1 Fair Employment Practices and Diversity.

(a) Tenant agrees to provide equal employment opportunities in connection with the operation of the Terminal. Moreover, in connection with the operation of the Terminal, Tenant agrees to comply with PRPA's nondiscrimination and integrity policies attached hereto and made a part hereof as **Exhibit D**.

(b) Tenant agrees to use reasonable efforts to seek diversity and inclusion in all of its design and construction contracts for any superstructure and/or infrastructure improvements at the Terminal consistent with PRPA's diversity and inclusion policies attached



hereto and made a part of **Exhibit D**; provided, however, that Tenant's failure to comply with such policies shall not be deemed to constitute a breach of this Lease.

## **ARTICLE XXIII**

### **OPINION OF COUNSEL**

23.1 **Opinion of Tenant's Counsel.** At the time of the execution of this Agreement, and as a condition to PRPA's obligations hereunder, Tenant shall deliver to PRPA an opinion of counsel acceptable to PRPA, stating that Tenant is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania, is duly qualified and in good standing to do business in the Commonwealth, and that this Agreement has been duly authorized, executed and delivered by Tenant. In addition, at the request of PRPA, Tenant shall deliver to PRPA an opinion of counsel acceptable to PRPA, to the effect that any sale of equipment to PRPA or transfer of equipment to the Terminal as contemplated herein shall not violate any agreement, other instrument, judgment, or decree to which Tenant is a party or by which it or such equipment is bound, and that Tenant's performance in connection therewith shall not in any way interfere with the performance of its obligations hereunder.

23.2 **Opinion of PRPA's Chief Counsel.** At the time of the execution of this Agreement, and as a condition to Tenant's obligations hereunder, PRPA shall deliver to Tenant an opinion of counsel stating that PRPA is a body politic and instrumentality of the Commonwealth of Pennsylvania, and that this Agreement has been duly authorized, executed and delivered by PRPA.

## **ARTICLE XXIV**

### **ADDITIONAL PROPERTY**

24.1 **Additional Parcels.**

- (a) (i) As of the Effective Date, Pier 96 South, Pier 98 South, and Pier

100 South (the “**Additional Parcels**”), as described on **Exhibit H** hereto, shall be included in and shall become a part of the Terminal, subject to the terms and conditions of this Agreement and subject to termination as to the Additional Parcels as set forth below in Section 24.1(b).

(ii) During the Term hereof, PRPA may lease to third parties all or part of any Additional Parcel for a term of six (6) months or less (assuming that all rights to renew or extend are exercised), upon Tenant’s prior consent, which such consent may not be unreasonably withheld, and for a term of more than six (6) months (assuming that all rights to review or extend are exercised), upon Tenant’s prior written consent, which such consent Tenant may grant or deny in its sole discretion; provided, however, that any such lease shall be pursuant to a written lease agreement upon ordinary and typical terms and conditions, including, without limitation, that any lessee party shall be solely responsible (A) to restore the Additional Parcel(s) so leased to an operating condition, and (B) for the maintenance and repair of the Additional Parcel(s) so leased by such party. Any rents or other revenues generated by any such lease shall be for the account of PRPA.

(iii) Upon Tenant’s request and the demonstration by Tenant to PRPA of a commercial need by Tenant to have any part of the Additional Parcels free of any leasehold or licensed interests (other than Tenant’s), PRPA shall terminate each lease, license or other arrangement affecting such part of the Additional Parcels (other than this Agreement) to the extent permitted thereby or, if permitted by such lease, license or arrangement, relocate such tenant. In the event PRPA relocates any tenant under any such lease, license or arrangement, or terminates any such lease, license or arrangement at Tenant’s request, then Tenant shall pay to PRPA an annual fee (the “**Additional Parcel Fee**”) equal to the difference between yearly rent that the tenant under such lease, license or arrangement, would have been obligated to pay to



PRPA as provided in such lease, license or arrangement and the yearly rent, if any, that PRPA will receive from such tenant.

(iv) Tenant shall not have any maintenance or repair obligations whatsoever with respect of the Additional Parcels, unless and until Tenant shall use and occupy the same in accordance with the terms and conditions of this Lease. Tenant may not enter or use Shed 98 unless, prior to any such entry or use thereof by Tenant, Tenant, at its sole cost and expense and in accordance with the provisions of Section 7.6, shall have caused such shed or sheds to be brought into full compliance with all applicable governmental laws, rules, codes, ordinances, orders and regulations (other than the Environmental Statutes referred to in Subsections 10.2(a)(iii)-(v)). In the event any remediation of any environmental condition present in Shed 98 is required under the Environmental Statutes referred to in Subsections 10.2(a)(iii)-(v) as a condition to the use thereof by Tenant, Tenant shall perform such remediation and PRPA shall reimburse Tenant for fifty percent (50%) of the actual costs incurred by Tenant in connection therewith up to a maximum reimbursement of One Hundred Thousand Dollars (\$100,000), whereupon PRPA shall not have any other obligation whatsoever in respect thereto.

(v) Any fees or revenues received by Tenant in connection with the use of the Additional Parcels shall be for the account of Tenant. Cargo, either Breakbulk or container, handled at the Additional Parcels shall not be counted toward the fulfillment by Tenant of the Shortfall Fee or the Breakbulk Guarantee, nor shall Container Pick Fees or Breakbulk Cargo Fees be charged with respect thereto unless such charges are due with respect to the handling of such cargo at portions of the Terminal other than the Additional Parcels.

(vi) PRPA and Tenant agree to consult concerning any funds available to PRPA through the capital budget of the Commonwealth with respect to the Additional Parcels.

(b) (i) From and after the Effective Date through and including December 31, 2022, Tenant shall have and enjoy, subject to the provisions of Section 7.6 and this Subsection 24.1(b), a non-exclusive right to develop the Additional Parcels. In consideration of the foregoing development rights, Tenant shall pay to PRPA on the Effective Date of and on each anniversary of the Effective Date, until such time as Tenant and PRPA enter into a Lease and Development Agreement with respect to the Additional Parcels or Tenant's rights with respect thereto are terminated, a development fee equal to Twenty-Five Thousand Dollars (\$25,000) (the "**Development Fee**").

(ii) Tenant's interests in and to the Additional Parcels and Tenant's non-exclusive development rights with respect thereto will terminate, automatically and without notice to Tenant effective as of January 1, 2023, unless PRPA approves, on or before December 31, 2022, a has not previously approved a development plan, prepared by a licensed architect, that includes a detailed description of the improvements to be constructed by Tenant the Additional Parcels. PRPA agrees to cooperate with and assist Tenant in reviewing potential, feasible development options for the Additional Parcels.

(c) If PRPA and Tenant agree to jointly develop the Additional Parcels a separate lease and operating agreement for the Additional Parcels will be entered into providing for: (A) the construction by Tenant of the necessary improvements to the Additional Parcels; (B) a preliminary lease term (the "**Preliminary Lease Term**") to terminate upon the substantial completion of the necessary improvements; (C) an agreed upon lease term to commence immediately following the termination of the Preliminary Lease Term; (D) agreed upon renewal



options, each exercisable only if Tenant is not in default at such time; (E) the termination of the lease upon Tenant's failure to construct the necessary improvements in accordance with the terms of such Lease; and (F) such other terms and conditions agreed to by PRPA and Tenant, including but not limited to the compensation to be paid by Tenant to PRPA with respect thereto. Upon entering into such new lease and operating agreement, the parties shall execute an amendment to this Agreement removing the Additional Parties from this Agreement effective as of the effective date of such new lease and operating agreement, and the parties shall cause such new lease and operating agreement and such amendment to be filed with the FMC.

(d) PRPA agrees to conduct a study on the cost to restore Pier 96. PRPA will use reasonable efforts to identify public funding for the restoration of Pier 96 for the use by Tenant. Notwithstanding, the restoration contemplated does not include dredging of any berths.

## ARTICLE XXV

### **PRPA'S RIGHT OF ACCESS TO THE TERMINAL**

25.1 **Visitors.** PRPA shall have the right of access to the Terminal for the purposes of showing the Terminal to visitors and invitees upon reasonable notice to Tenant; provided, however, that such entry shall not unreasonably interfere with Tenant's operations and that PRPA shall take reasonable precautions in order to protect the safety of such visitors and invitees.

25.2 **Property and Cargo Under Tenant's Control.** PRPA reserves the right, but shall have no responsibility or obligation, to inspect the Terminal as to fire hazards and other hazards of a like kind or nature. PRPA assumes no responsibility or liability for loss or damage to the property of Tenant or property under the control of Tenant, whether caused by fire, water or otherwise except as otherwise provided by this Agreement, nor does PRPA assume responsibility for any shortages of cargo handled by Tenant at the Terminal, as to which Tenant

hereby releases PRPA. The right of inspection reserved to PRPA hereunder shall impose no obligation on PRPA to make inspections to ascertain the condition of the Terminal, and shall impose no liability upon PRPA for failure to make such inspections, but nothing contained in this sentence shall reduce PRPA's obligations under other provisions hereof.

25.3 **Utility Lines and Easements.** Subject to the giving of reasonable written notice to Tenant, PRPA reserves to itself and others the right to locate, construct, install and maintain sewers, utilities and pipelines upon or across the Terminal at locations which do not unreasonably interfere with Tenant's use of the Terminal, provided that the work related thereto shall not unreasonably interfere with Tenant's use of the Terminal, and that PRPA shall cause the Terminal to be restored following such work. With respect to any such work, PRPA shall consult with Tenant as to the location of such sewers, utilities and pipelines. Tenant shall cooperate with PRPA or its designees in order that the work can be accomplished in the shortest possible time.

25.4 **Commonwealth.** The Commonwealth, its contractors, agents, and employees shall have the right, but no obligation, of access to the Terminal to inspect the Terminal to determine the state of maintenance, repair and condition of the Terminal, provided, however, that such entry shall not unreasonably interfere with Tenant's operations and that the Commonwealth take reasonable precautions in order to protect its safety.

## ARTICLE XXVI

### **RIGHT OF FIRST REFUSAL**

#### 26.1 **Right of First Refusal.**

(a) So long as no Event of Default then exists under this Agreement and so long as Tenant complies with the Development Covenants for a continuous period of twenty (20) Lease Years following the Effective Date, Tenant will have the right of first refusal ("**Right of**



**First Refusal**") to lease (i) any new container facility, if any, hereafter developed, leased by, or acquired by PRPA and available for lease during the Term (herein, a "**New Facility**"), and (ii) the Pier 98 Annex, Whiskey Yard and Savage Yard (collectively, the "**Additional Yards**"), if and to the extent that all or any part of the Additional Yards becomes available for lease during the Term. The Right of First Refusal shall apply only to a New Facility or space within the Additional Yards that is not subject to prior rights of tenants under other leases or operating agreements with PRPA. The Right of First Refusal may only be exercised in accordance with the terms and conditions set forth in this Section.

(b) If a New Facility or the Additional Yards becomes available during the Term of this Agreement, Tenant will be afforded the first opportunity to lease such space at the then current market rate. PRPA will provide notice to Tenant of the opportunity and Tenant will have sixty (60) calendar days to indicate if it will lease the New Facility or the Additional Yards. PRPA's notice to Tenant cannot occur more than one hundred eighty (180) calendar days from the New Facility or Additional Yards being available for lease and occupancy

(c) If PRPA acquires additional acreage between the areas bounded by the south side of Pier 124 to the Southside of Pier 78 from the River west to Broad Street and such property is not intended for road or rail infrastructure improvements, during the Term of this Agreement, Tenant will be afforded the first opportunity to lease such space at the then current market rate. PRPA will provide notice to Tenant of the opportunity and Tenant will have sixty (60) calendar days to indicate if it will lease the New Facility or the Additional Yards. PRPA's notice to Tenant cannot occur more than one hundred eighty (180) calendar days from the New Facility or Additional Yards being available for lease and occupancy. PRPA and Tenant will

jointly explore opportunities to identify new acreage to support container and other cargoes handled at PAMT.

## **ARTICLE XXVII**

### **REPRESENTATIONS AND WARRANTIES OF TENANT AND PRPA**

27.1 **Authorization.** Each party hereby represents and warrants to the other that it has the requisite power and authority to make and perform its obligations under this Agreement, and the execution of this Agreement has been duly authorized by all requisite corporate action.

27.2 **Non-Conflict.** Each party hereby represents and warrants to the other that, except as set forth in the following sentence, the execution, delivery and performance of this Agreement will not violate any provision of, nor conflict with, nor result in a breach of, any of the terms, conditions, or provisions of, nor constitute a default under, any agreement, indenture or instrument to which it is a party.

## **ARTICLE XXVIII**

### **MISCELLANEOUS**

28.1 **Notices.** Any notice permitted or required to be sent hereunder by either party to the other party shall be in writing, and shall be deemed to have been given when served in person on the addressee, or sent by certified mail, return receipt requested, or by overnight delivery service, postage prepaid, addressed as follows:

If to PRPA:

Philadelphia Regional Port Authority  
3460 N. Delaware Avenue  
Philadelphia, PA 19134  
Attention: Director

with a copy to:

Gregory V. Iannarelli



Chief Counsel  
Philadelphia Regional Port Authority  
3460 N. Delaware Avenue  
Philadelphia, PA 19134

If to Tenant:

Astro Holdings, Inc.  
101 South King Street  
Gloucester City, NJ 08030  
Attention: General Counsel

with a copy to:

Stradley Ronon Stevens & Young, LLP  
2005 Market Street, Suite 2600  
Philadelphia, PA 19103  
Attention: William R. Sasso, Esquire

and with a further copy to:

Stradley Ronon Stevens & Young, LLP  
2005 Market Street, Suite 2600  
Philadelphia, PA 19103  
Attention: Jonathan M. Grosser, Esquire

or at such other place and to such other persons as the parties hereto may from time to time designate. In the event of an emergency requiring prompt attention in order to prevent danger to life or serious property damage which does not occur during traditional business hours, in addition to the foregoing notice requirements, notice shall be in writing and sent via telephonic transmission and hand delivery to such telecopier numbers and non-office addresses as the parties may provide to one another from time to time.

28.2 **Captions.** The use of "Article" or "Section" headings or captions in this Agreement is solely for the purpose of convenience, and the same shall be entirely disregarded in construing any portion of this Agreement.

28.3 **Terms Binding on Successors.** All the terms, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon the successors, assigns and Transferees of the parties hereto. The provisions of this Section 28.3 shall not be deemed as a waiver of any of the conditions limiting Transfers by Tenant set forth herein.

28.4 **Applicable Law.** This Agreement and all questions arising thereunder shall be construed according to the laws of the Commonwealth of Pennsylvania, except with respect to the requirements of the Shipping Act of 1984 and any other federal laws or procedures which may be applicable.

28.5 **Consent to Jurisdiction, Service and Venue.** For the purpose of enforcing payment of the compensation due hereunder and performance of its obligations hereunder or otherwise in connection herewith, Tenant hereby consents to the jurisdiction and venue of the Court of Common Pleas for Philadelphia County and the Commonwealth Court (to the extent each may have subject matter jurisdiction) or of the United States District Court for the Eastern District of Pennsylvania; provided, however, that nothing contained herein shall be or deemed to be a waiver of any right Tenant may have to remove any action from state court to an appropriate federal court as long as any such removal will not operate to prevent PRPA from exercising and enjoying any of its remedies set forth in Section 19.1, including, without limitation, the remedy of confession of judgment in ejectment. The provisions of this Section 28.5 shall not limit or otherwise affect the right of PRPA to institute and conduct action in any other appropriate manner, jurisdiction or court.

28.6 **Limit on PRPA's Liability.** Notwithstanding anything to the contrary contained herein, the liability of PRPA hereunder shall be limited to its interest in and to the Terminal and to the revenues and other intangible assets of PRPA. Any judgment against PRPA hereunder



shall be enforceable solely against the foregoing assets of PRPA, and any such judgment shall contain a specific notation that such judgment is not a lien upon and may not be enforced against any real property interests, including leaseholds, of PRPA other than its fee and leasehold interests with respect to the Terminal.

28.7 **Certain Certificates.** Upon Tenant's request, made in connection with any loan to be secured by any equipment owned or leased by Tenant for use at the Terminal, including without limitation the Tenant Cranes, PRPA will deliver to Tenant or the lender making such loan, such certificates, instruments and documents as the lender reasonably may request, which certificates, instruments, and documents shall confirm that PRPA has no landlord's lien on, security interest in, distress or distraint right or any other right whatsoever with respect to any such equipment, and agree not to assert any claim against or permit any lien in favor of PRPA to be filed against any such equipment, other than PRPA's option to purchase the Tenant Cranes as provided herein. Tenant shall pay any costs incurred by PRPA (including reasonable attorneys' fees) in connection with any such certificates, instruments and documents.

28.8 **Time of Essence.** Time shall be of the essence of this Agreement.

28.9 **Severability.** If any provision hereof is found by a court of competent jurisdiction or by a regulatory agency to be prohibited or unenforceable, it shall be ineffective only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability shall not invalidate the balance of such provision to the extent it is not prohibited or unenforceable, nor invalidate the other provisions hereof.

28.10 **Entire Agreement.** This Agreement sets forth all the promises, agreements, conditions and understandings between PRPA and Tenant relative to the Terminal, and there are no promises, agreements, conditions or understandings, either oral or written, between them

other than are herein set forth. Except as otherwise provided herein, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon PRPA or Tenant unless made in writing and signed by both parties hereto and filed with the FMC.

28.11 **No Third Party Beneficiaries.** This Agreement and all of the provisions hereof are for the benefit of the parties executing this Agreement, and the Commonwealth to the limited extent set forth on the signature page, only, and no provisions of this Agreement shall be deemed or construed to grant to any other person or entity any right, power or privilege, or any entitlement to any benefit, claim or interest under this Agreement, and no other person or entity is to have any right of action hereunder, except only as set forth in Section 28.3.

28.12 **Certain Payments at End of Term.** At the expiration or termination of this Agreement, including any Renewal Periods, either party may set off amounts owed to it hereunder against amounts owed by it hereunder.

28.13 **Releases.** The parties acknowledge that First Amended Lease Agreement remains in full force and effect in its current form and governs and controls the duties and obligations of the parties with respect to the subject matter thereof unless and until the Effective Date of this Agreement occurs pursuant to Section 2.1. Tenant and PRPA acknowledge and agree that Tenant has paid to PRPA all base compensation due and payable under First Amended Lease Agreement through and including November, 2016. Payments of base compensation due and payable under the First Amended Lease Agreement which are based on activity levels of Tenant during the current lease year thereunder through the Effective Date hereof shall be paid by Tenant to PRPA on or before the thirtieth (30) day following the Effective Date. Effective as of the Effective Date and subject to Tenant's payments to PRPA as provided in the preceding sentence, PRPA hereby releases Tenant, and, effective as of the Effective Date, Tenant hereby



releases PRPA, from any and all liabilities and obligations arising under First Amended Lease Agreement through the date hereof, except for such party's indemnification obligations thereunder, and for any and all other contractual, common law or statutory claims, including but not limited to claims arising under the Shipping Act of 1984. Such release shall not prevent or preclude Tenant from impleading PRPA, filing a cross-claim against PRPA or joining or seeking contribution from PRPA, in any action or suit brought by a third party, nor prevent or preclude PRPA, as the case may be, from impleading Tenant, filing a cross-claim against Tenant, joining or seeking contribution from Tenant, in any action brought by a third party.

28.14 **Review of Operations.** Not less frequently than quarterly, on such dates and at such times and locations as PRPA may reasonably designate, representatives of PRPA and Tenant shall meet to review the operations at the Terminal, the need for the dredging of the berths to particular depths, and the performance of both parties hereunder.

28.15 **Transfer Taxes.** Tenant shall pay any and all realty transfer taxes that may be due and payable in connection with the execution and delivery of this Agreement.

28.16 **Refrigerated Warehouse Release.** Tenant hereby releases and agrees to indemnify, defend and hold PRPA harmless from any and all liability arising from or caused by a breakdown of the refrigeration system of the refrigerated warehouse or such system's being out of service for any reason whatsoever, except for willful misconduct by PRPA, its agents or employees.

28.17 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall constitute one and the same instrument. This Agreement shall

become binding when any one or more counterparts hereof individually or taken together shall bear the signatures of PRPA and Tenant.

[signature pages follow]



IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

ASTRO HOLDINGS, INC.

Attest: Lisa A. Kline  
Name: Lisa A. Kline, Esq.  
Title: General Counsel

By: [Signature]  
Name: Thomas J. Holt, Jr.  
Title: President

[Seal]


PHILADELPHIA REGIONAL PORT  
AUTHORITY

Attest: [Signature]  
Name: John F. Doherty  
Title: Deputy Exec. Director

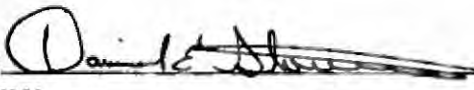
By: [Signature]  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to Legality and  
Form:

PHILADELPHIA REGIONAL  
PORT AUTHORITY

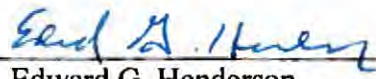
By:   
Name: Gregory V. Iannarelli, Esq.  
Title: Chief Counsel

OFFICE OF THE ATTORNEY  
GENERAL

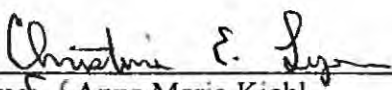
By:   
Name:  
Title: Deputy Attorney General

Approved as to Fiscal Responsibility and  
Budgetary Appropriateness:

PHILADELPHIA REGIONAL  
PORT AUTHORITY

By:   
Name: Edward G. Henderson  
Title: Director of Finance & Capital Funding

OFFICE OF THE BUDGET

By:  12-19-16  
Name: Anna Maria Kiehl  
Title: Comptroller



**JOINDER BY COMMONWEALTH OF PENNSYLVANIA**

The Commonwealth of Pennsylvania joins in this Agreement solely for the purpose of granting non-disturbance to Tenant pursuant to Section 1.8, consenting to repairs, restorations, alterations and demolition by Tenant which PRPA may from time to time approve under Section 7.6 and filling of berths by Tenant which PRPA may from time to time approve under Section 24.1, consenting to the Right of First Refusal granted pursuant to Section 26.1, and consenting to the reconstruction and rehabilitation of the Terminal and the Cranes upon a casualty, and to the use of insurance proceeds for such purpose, as set forth in Section 13.1.

THE COMMONWEALTH OF PENNSYLVANIA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

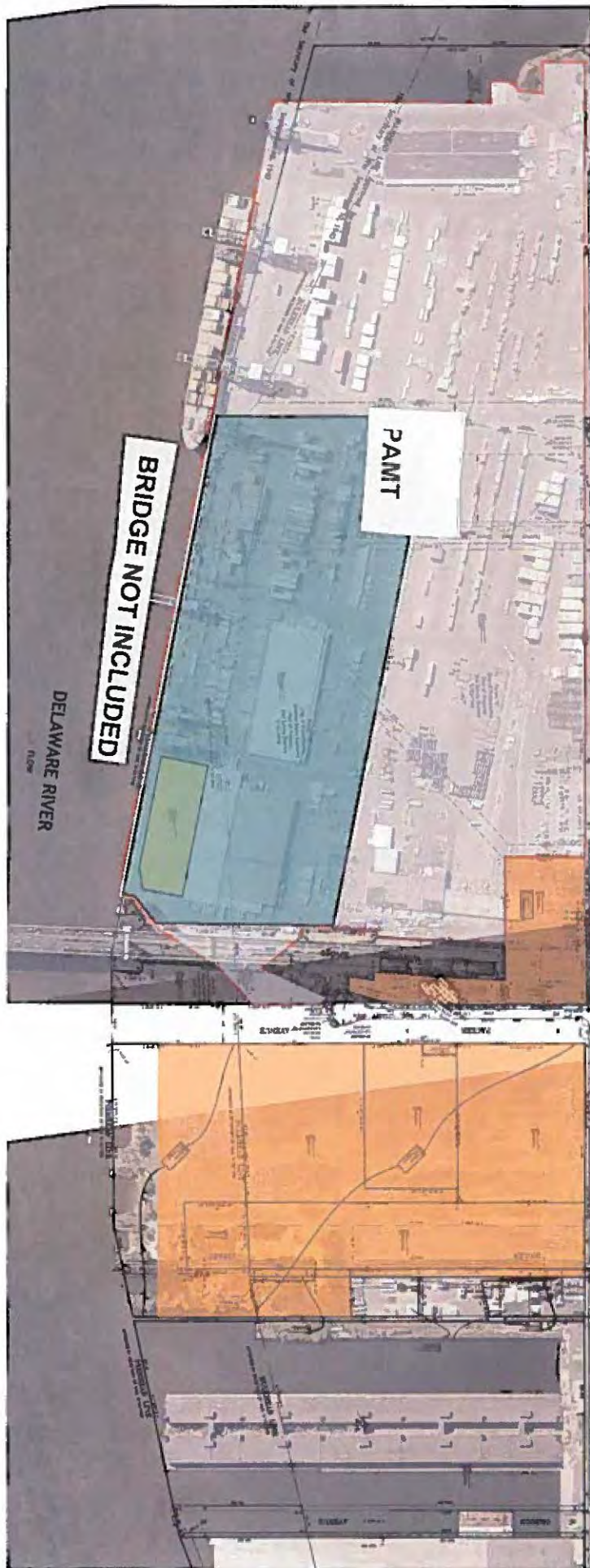
**EXHIBIT A**

**PACKER AVENUE MARINE TERMINAL SITE PLAN**





MATCHLINE SEE SHEET 1



BRIDGE NOT INCLUDED

PANT

DELAWARE RIVER

LOCATION MAP N.T.S.

NOTES

1. This map was prepared by the Delaware River Port Authority (DRPA) for the purpose of showing the location of the proposed bridge crossing the Delaware River. The map is not to be used for any other purpose.
2. The map is based on aerial photography and other data provided by the DRPA. The map is not to be used for any other purpose.
3. The map is not to be used for any other purpose.
4. The map is not to be used for any other purpose.
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9. The map is not to be used for any other purpose.
10. The map is not to be used for any other purpose.

LEGEND

PROPOSED BRIDGE  
EXISTING BRIDGE  
DELAWARE RIVER

COPYRIGHT 2016

This map was prepared by the Delaware River Port Authority (DRPA) for the purpose of showing the location of the proposed bridge crossing the Delaware River. The map is not to be used for any other purpose.

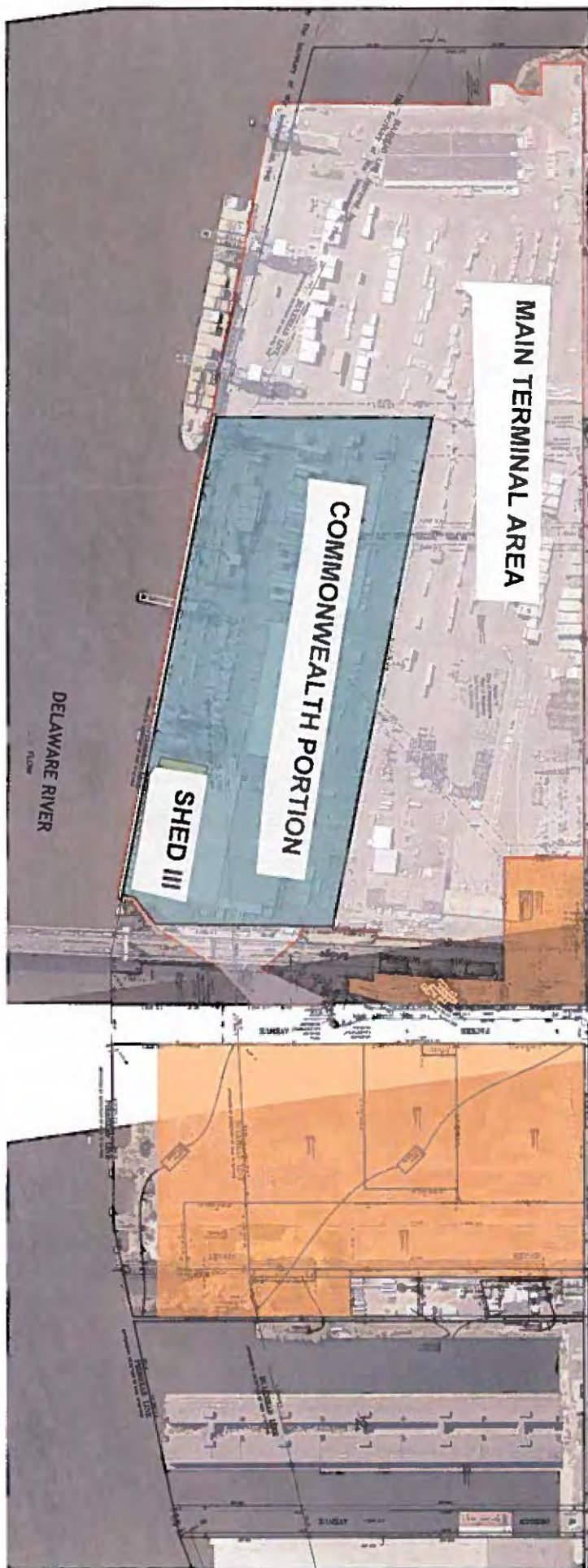
GRAPHIC SCALE



**EXHIBIT B**

**PLAN SHOWING THE MAIN TERMINAL AREA,  
THE COMMONWEALTH AREA AND SHED C**





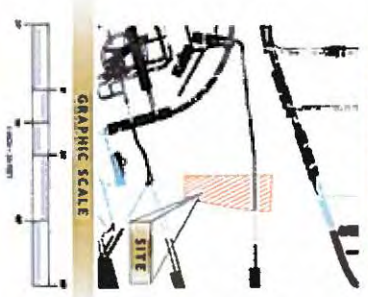
MATCHLINE SEE SHEET 1

**LEGEND**  
 Solid line  
 Dashed line  
 Centerline

**COPYRIGHT 2016**  
 The Delaware River Port Authority is the copyright owner of this map. All rights are reserved. No part of this map may be reproduced without the written permission of the Delaware River Port Authority. Copyright 2016 Delaware River Port Authority.

**NOTES**  
 1. All dimensions are in feet unless otherwise noted.  
 2. All dimensions are to the centerline of the structure unless otherwise noted.  
 3. All dimensions are to the outside of the structure unless otherwise noted.  
 4. All dimensions are to the inside of the structure unless otherwise noted.  
 5. All dimensions are to the centerline of the structure unless otherwise noted.  
 6. All dimensions are to the outside of the structure unless otherwise noted.  
 7. All dimensions are to the inside of the structure unless otherwise noted.  
 8. All dimensions are to the centerline of the structure unless otherwise noted.  
 9. All dimensions are to the outside of the structure unless otherwise noted.  
 10. All dimensions are to the inside of the structure unless otherwise noted.

LOCATION MAP N.T.S.



GRAPHIC SCALE

**EXHIBIT C**

**LEGAL DESCRIPTION**

Plus any acreage acquired as a result of vacation of Packer Avenue adjacent to the Publicker Property.



## **EXHIBIT D**

### **NONDISCRIMINATION AND DIVERSITY REQUIREMENTS; INTEGRITY PROVISIONS**

**A. Nondiscrimination Requirements.** During the Term of this Agreement, Tenant agrees as follows:

1. Tenant shall not discriminate against any employee, applicant for employment, contractor, customer, or any other person because of race, color, religious creed, handicap, ancestry, national origin, age or sex. Tenant shall take affirmative action to insure that applicants are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, handicap ancestry, national origin, age or sex. Such affirmative action shall include, but is not limited to: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. Tenant shall post in conspicuous places, available to employees, agents, applicants for employment, and other persons, a notice to be provided by the PRPA setting forth the provisions of this nondiscrimination clause.
2. Tenant shall, in advertisements or requests for employment placed by it or on its behalf, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, handicap, ancestry, national origin, age or sex.
3. Tenant shall send each labor union workers' representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this nondiscrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by Tenant.
4. It shall be no defense to a finding of noncompliance with this nondiscrimination clause that Tenant had delegated some of its employment, practices to any union, training program, or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the Tenant was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.
5. Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority group persons, so that Tenant will be unable to meet its obligations under this nondiscrimination clause, Tenant shall then employ and fill vacancies through other nondiscrimination employment procedures.
6. Tenant shall comply with all state and federal laws prohibiting discrimination in hiring or employment opportunities.

7. Tenant shall furnish all necessary employment documents and records to, and permit access to its books, records, and accounts by, PRPA for purposes of investigation to ascertain compliance with the provisions of this clause. If Tenant does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by PRPA.
8. Tenant shall actively recruit minority and women subcontractors or subcontractors with substantial minority representation among their employees.
9. Tenant shall include the provisions of this nondiscrimination clause in every subcontractor's contract, so that such provisions will be binding upon each subcontractor.

**B. Integrity Provisions.**

1. Definitions. As used in this Exhibit D:
  - a. "Confidential" means information that is not public knowledge, or available to the public or request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with PRPA.
  - b. "Consent" means written permission by a duly authorized officer or employee or PRPA, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, PRPA shall be deemed to have consented by virtue of execution of this Agreement.
  - c. "Financial interest" means:
    - (1) ownership of more than a 5% interest in any business; or
    - (2) holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
  - d. "Gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscription, advances, deposits of money, services, employment of contracts of any kind.
  - e. "Tenant" means the Tenant Holdings, Inc., and the Management Team.
2. Tenant shall maintain the highest standards of integrity in the performance of this Agreement and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth of Pennsylvania (the "Commonwealth") or PRPA.



3. Tenant shall not disclose to others any confidential information gained by virtue of this Agreement.
4. Tenant shall not, in connection with this or any other agreement with PRPA or the Commonwealth, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on any one as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of PRPA or the Commonwealth.
5. Tenant shall not, in connection with this or any other agreement with PRPA or the Commonwealth, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of PRPA or the Commonwealth.
6. Except with the consent of PRPA or the Commonwealth, neither Tenant nor anyone in privity with it shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under this Agreement except as provided therein.
7. Tenant, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify PRPA in writing.
8. Tenant, by execution of this Agreement and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that it has not violated any of these provisions.
9. Tenant shall, upon request of PRPA or the Office of State Inspector General of the Commonwealth, reasonably and promptly make available to that PRPA and office and its representatives, for inspection and copying, all business and financial records of Tenant of, concerning, and referring to this agreement with PRPA or which are otherwise relevant to the enforcement of these provisions.

**C. Diversity and Inclusion Provisions.** Tenant will use commercially reasonable efforts to seek diversity and inclusion in its contracts involving Terminal operations that is consistent with the following diversity and inclusion policies applicable to PRPA:

1. For purposes of the following, the "Diversity Inclusion Pool" shall include four categories: (1) minority-owned, (2) woman-owned, (3) veteran-owned and service-disabled-veteran-owned and (4) LGBT small business.
2. All contracts awarded for construction, services and professional services will have a minimum participation level from the Diversity Inclusion Pool set by the Director of Procurement, but in no event shall it be less than 20% of the contract value. The participation for each award must include at least 2 of the categories in the Diversity Inclusion Pool with no less than 5% participation for each category being included.

3. For contracts with a value of less than \$100,000, prime contractors that would otherwise be part of the Diversity Inclusion Pool will be allowed to count their performance toward the minimum participation requirement.



## **EXHIBIT E**

### **PRPA IMPROVEMENTS**

PRPA will, prior to the Substantial Completion Date and at PRPA's sole cost and expense, make the following improvements to the Terminal:

Berth Infrastructure (including electrification of the wharf)

Acquisition of 3 STS Cranes\*

Hyundai cranes electrification/K crane removals (see Exhibit G hereto).

Demo Terminal Warehouse

Terminal Warehouse Replacement\*\*

\* PRPA will purchase one STS crane from Astro at the cost of the procurement with no markup upon delivery and successful commissioning of the crane.

\*\*Acquisition and retrofit of 260,000 Square Feet Warehouse and/or build new warehouse(s) to replace warehouses at Terminal. Expectation is that there will be sufficient funding in the line item above to add additional warehouse space. PRPA commits to provide a minimum of 365,500 sq. ft. of warehouse space.

## **EXHIBIT F**

### **TENANT IMPROVEMENTS**

Tenant will, prior to the Substantial Completion Date, make, or cause to be made, at no cost of expense to PRPA, the following improvements to the Terminal and the Publicker Property:

Improvements to Publicker Property - 40 acres +/-\* to allow Publicker to be utilized to support the Terminal

Terminal gate investment

Miscellaneous Enhancements (warehouse allowance)

Acquisition of two STS cranes (PRPA to purchase one Tenant STS upon successful commissioning at the Terminal)

\* Subject to easements, access agreements and rights of ways.



## **EXHIBIT G**

### **CRANES**

#### **A. PRPA Cranes.**

1. The following cranes owned by PRPA are located at the Terminal as of the Effective Date:

K-2 Kocks Crane\*

K-3 Kocks Crane\*

K-5 Kocks Heavy Lift Crane\*

Paceco Crane

H-6 Hyundai Crane

H-7 Hyundai Crane

2. In addition to the foregoing, after the Effective Date, PRPA will purchase and install at the Terminal the following new cranes in accordance with the provisions of this Agreement:

2 STS Cranes &

1 ZPMC Crane to be purchased from Astro upon successful commissioning of the crane at the Terminal.

#### **B. Tenant Cranes.**

1. The following cranes owned by Tenant are located at the Terminal as of the Effective Date:

South Kocks Crane (83' 8" gauge)\*\*

2. In addition to the foregoing, after the Effective Date, Tenant will purchase and install at the Terminal the following new crane in accordance with the provisions of this Agreement:

1 ZPMC Crane (not the crane identified above)

\* K-2 Kocks Crane; K-3 Kocks Crane; and K-5 Kocks Heavy Lift Crane shall each be removed from the Terminal by PRPA, at PRPA's sole cost and expense, as part of the PRPA Improvements.

- \*\* Tenant shall be permitted to cause the South Kocks Crane (88' gauge) to be removed from the Terminal at any time; provided, however, that upon such removal, the South Kocks Crane shall be sold, scrapped or relocated to the Gloucester Marine Terminal.**



## **EXHIBIT H**

### **LOAD LIMITS**

#### **DESIGN LOAD CAPACITIES**

Pier 100	Deck	500 psf
Pier 98	Deck and 1st Floor of Shed	500 psf
	Pier 98 1st Floor of Shed	300 psf
	Pier 98 2nd Floor of Shed	300 psf
Pier 96	Deck	500 psf
Terminal		1000 psf

The load limits on portions of Pier 96 are limited. Refer to the Hudson Report referenced in Section 6.5. The foregoing notwithstanding, the parties agree that the use of the Terminal as of the Effective Date shall not be deemed to constitute a breach of Section 6.5 or this **Exhibit H**, anything therein or herein to the contrary notwithstanding.

## **EXHIBIT I**

### **CERTAIN TRACKAGE RIGHTS**

1. Agreement dated December 3, 1982 between Consolidated Rail Corporation and Philadelphia Port Corporation.
2. Agreement for Industry Track dated December 18, 1986 between Consolidated Rail Corporation and Philadelphia Port Corporation with respect to Pier 96 South.
3. Agreement for Industry Track dated June 17, 1980 between Consolidated Rail Corporation and Philadelphia Port Corporation with respect to Packer Avenue Marine Terminal.

The Philadelphia Port Corporation assigned the foregoing agreements to the Philadelphia Regional Port Authority.



**EXHIBIT J**

**PLAN SHOWING ADDITIONAL PARCELS**

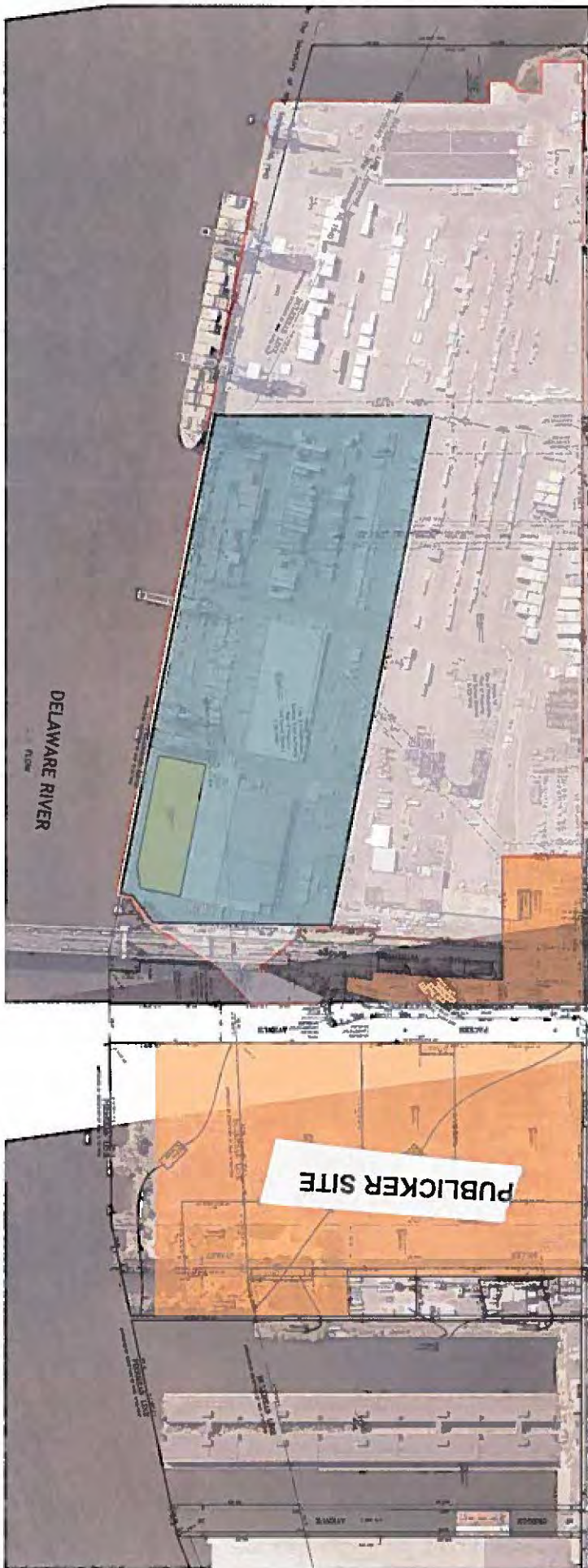
## **EXHIBIT K**

### **LEGAL DESCRIPTION/PLAN DESCRIBING PUBLICER PROPERTY**

Plus any acreage acquired as a result of vacation of Packer Avenue adjacent to the Publicer Property.



MATCHLINE SEE SHEET 1



LOCATION MAP N.T.S.

**NOTES**

1. THIS DRAWING IS THE PROPERTY OF THE ENGINEER AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THE ENGINEER.
2. THE ENGINEER HAS CONDUCTED VISUAL INSPECTIONS OF THE SITE AND HAS OBSERVED THE EXISTING CONDITIONS. THE ENGINEER HAS NOT CONDUCTED ANY SOIL BORINGS OR OTHER INVESTIGATIONS TO DETERMINE THE EXISTING SOIL CONDITIONS OR THE DEPTH OF THE EXISTING FOUNDATIONS.
3. THE ENGINEER HAS NOT CONDUCTED ANY INVESTIGATIONS TO DETERMINE THE EXISTING WATER TABLE OR THE DEPTH OF THE EXISTING FOUNDATIONS.
4. THE ENGINEER HAS NOT CONDUCTED ANY INVESTIGATIONS TO DETERMINE THE EXISTING GROUNDWATER CONDITIONS OR THE DEPTH OF THE EXISTING FOUNDATIONS.
5. THE ENGINEER HAS NOT CONDUCTED ANY INVESTIGATIONS TO DETERMINE THE EXISTING GROUNDWATER CONDITIONS OR THE DEPTH OF THE EXISTING FOUNDATIONS.
6. THE ENGINEER HAS NOT CONDUCTED ANY INVESTIGATIONS TO DETERMINE THE EXISTING GROUNDWATER CONDITIONS OR THE DEPTH OF THE EXISTING FOUNDATIONS.
7. THE ENGINEER HAS NOT CONDUCTED ANY INVESTIGATIONS TO DETERMINE THE EXISTING GROUNDWATER CONDITIONS OR THE DEPTH OF THE EXISTING FOUNDATIONS.
8. THE ENGINEER HAS NOT CONDUCTED ANY INVESTIGATIONS TO DETERMINE THE EXISTING GROUNDWATER CONDITIONS OR THE DEPTH OF THE EXISTING FOUNDATIONS.
9. THE ENGINEER HAS NOT CONDUCTED ANY INVESTIGATIONS TO DETERMINE THE EXISTING GROUNDWATER CONDITIONS OR THE DEPTH OF THE EXISTING FOUNDATIONS.
10. THE ENGINEER HAS NOT CONDUCTED ANY INVESTIGATIONS TO DETERMINE THE EXISTING GROUNDWATER CONDITIONS OR THE DEPTH OF THE EXISTING FOUNDATIONS.

GRAPHIC SCALE



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THE ENGINEER HAS CONDUCTED VISUAL INSPECTIONS OF THE SITE AND HAS OBSERVED THE EXISTING CONDITIONS. THE ENGINEER HAS NOT CONDUCTED ANY SOIL BORINGS OR OTHER INVESTIGATIONS TO DETERMINE THE EXISTING SOIL CONDITIONS OR THE DEPTH OF THE EXISTING FOUNDATIONS.

LEGEND

EXISTING SITE  
EXISTING LANE  
EXISTING ROAD



## Exhibit K

All of the following seven parcels of real estate, to wit:

ALL THOSE CERTAIN tracts of land with the buildings and improvements thereon erected, SITUATE in the 39<sup>th</sup> ward of the City of Philadelphia as follows:

THE FIRST THEREOF BEGINNING at the intersection of the middle line of Bigler Street and the East side of Delaware Avenue (250 feet wide) thence extending South 75 degrees 30 minutes East along the middle line of Bigler Street 1,262 feet 4-1/2 inches to the Bulkhead line in the Delaware River established by the War Department August 9<sup>th</sup>, 1909 thence extending along said Bulkhead line South 11 degrees 37 minutes 24.38 seconds West 250 feet 2 inches thence extending North 75 degrees 28 minutes West 1,274 feet 11-1/8 inches to the East side of Delaware Avenue aforesaid thence extending along the East side of Delaware Avenue North 14 degrees 30 minutes East 249 feet 1-3/8 inches to the middle line of Bigler Street aforesaid and place of beginning.

THE SECOND THEREOF BEING ALL that tract of land with the buildings and improvement thereon erected lying between on the aforesaid Bulkhead line in the Delaware River established by the War Department August 9<sup>th</sup>, 1909 and the Bulkhead or Arbitrary low-water Line established by the Board of Port Wardens on November 12<sup>th</sup>, 1866 described as follows to wit:

BEGINNING at the intersection of the middle line of said Bigler Street and the Bulkhead line in the Delaware River established by the War Department August 9<sup>th</sup>, 1909 thence extending along the middle line of said Bigler Street South 75 degrees 30 minutes East 184 feet 1-1/2 inches to a point thence extending Northeast at right angle to the middle line of said Bigler Street 30 feet to a point thence extending Southeast along a line parallel with the middle line of said Bigler Street 49 feet 4-5/8 inches to a point and thence extending Southwest 280 feet 5-7/8 inches to a point and thence extending North 75 degrees 28 minutes West 235 feet 6 inches to the said Bulkhead line established by the War Department on 8/9/1909 and thence extending along said Bulkhead line established by the War Department on 8/9/1909 North 11 degrees 37 minutes 24.38 seconds East 250 feet 2 inches to the middle line of said Bigler Street and place of beginning.

THE THIRD THEREOF BEGINNING at a point 30 feet northwardly of the center line of Bigler Street (if extended to the Delaware River of the width of 60 feet) at the distance of 1,446 feet 6 inches Eastwardly from the West house line of Delaware Avenue (250 feet wide on City Plan and legally opened) thence extending Northwardly 10 feet more or less to a point thence extending Eastwardly 46 feet 11 inches more or less to a point in the Bulkhead or Arbitrary Low-Water line established by the Board of Port Wardens 11/12/1866 thence Southwardly along said Bulkhead or Arbitrary Low-Water Line 10 feet more or less to a point thence Westwardly along a line parallel with the center line of Bigler Street 49 feet 4-5/8 inches more or less to the first mentioned point and placed of beginning.



THE FOURTH THEREOF BEGINNING at a point on the West house line of the former Delaware Avenue (stricken from the City Plan) and the middle line of Bigler Street (if extended to the Delaware River of the width of 60 feet) thence extending Northwardly 180 feet to a point thence Eastwardly 607 feet 11-3/4 inches to the Port Wardens Bulkhead or Arbitrary Low-Water Line established by the Board of Port Wardens 11/12/1866 thence extending Southwardly along the said Low-Water line 140 feet 1-1/4 inches to a point thence Westwardly 246 feet 11 inches to a point thence Southwardly 40 feet to a point and thence Westwardly 363 feet 4 inches more or less to the first mentioned point and place of beginning.

THE FIFTH THEREOF BEGINNING at a point 30 feet Northwardly of the center line of Bigler Street ( if extended to the Delaware River of the width of 60 feet) at the distance of 363 feet 4 inches Eastwardly from the West house line of former Delaware Avenue (stricken from the City Plan) thence extending Eastwardly along a line parallel with the said center line of Bigler Street 200 feet to t appoint thence extending Northwardly 10 feet to a point thence extending Westwardly 200 feet to t point and thence extending Southwardly 10 feet to a point 30 feet Northwardly of the center line of Bigler Street said latter point being the first mentioned point and place of beginning.

THE SISTH THEREOF BEGINNING at a point in the middle line of Bigler Street at the distance of 1,246 feet 6 inches East of Delaware Avenue (200 feet wide) thence extending Northeastwardly on a line at right angles to the said Bigler Street 30 feet thence extending Southeastwardly on a line parallel with the middle line of Bigler Street 200 feet to a point thence extending Southwardly on a line at right angles to said Bigler Street 30 feet to a point in the middle line of said Bigler Street thence extending Northwestwardly along the said middle line of said Bigler Street 200 feet, to the first mentioned point and place of beginning.

ALL THAT CERTAIN tract of land situate in the 39<sup>th</sup> Ward of the City of Philadelphia and Commonwealth of Pennsylvania, on the East side of Delaware Avenue (250 feet wide)

BEGINNING at the intersection of the East side of Delaware Avenue with the North side of Packer Avenue (148 feet wide), thence extending along the said East side of Delaware Avenue North 14 degrees 30 minutes East 596 feet 10 inches and 5/8ths of an inch to a corner of land of Publicker Commercial Alcohol Company, now known as Publicker industries, Inc. thence extending along said land South 75 degrees 28 minutes East 477 feet 1 inch and 3/4ths of an inch to a point, thence extending on a line parallel with the pierhead line established by the Secretary of War, 8/9/1909, South 13 degrees 52 minutes 52 seconds West 596 feet 7 inches and 3/4 of an inch to a point on the North side of Packer Avenue aforesaid thence extending along said North side of Packer Avenue North 75 degrees 30 minutes West 483 feet 7 inches and 1/8 of an inch to the East side of Delaware Avenue the first mentioned point and place of beginning.

CONTANING 6 acres and .5807 of an acre, as per survey by W.C. Reeder, Surveyor and Reguiator, 2<sup>nd</sup> District (Philadelphia) dated 8/1/1933.



ALL THAT CERTAIN tract, parcel or piece of land situated at the Southeasterly corner of Packer and Delaware Avenues in the 39<sup>th</sup> Ward, City of Philadelphia, Pennsylvania, bounded and described as follows:

BEGINNING at the point of intersection of the Southerly line of Packer Avenue (148 Feet wide) and the Easterly line of Delaware Avenue (250 Feet wide); thence extending south 75 degrees 30 minutes East 300.60 feet along the Southerly line of Packer Avenue to a point; thence leaving said Packer Avenue at right angles South 14 degrees 30 minutes West 551.10 feet to a point; thence North 75 degrees 30 minutes West 300.60 feet to a point on the Easterly line of Delaware Avenue; thence along the Easterly line of Delaware Avenue North 14 degrees 30 minutes East 551.10 feet to a point in the Southerly line of Packer Avenue and PLACE OF BEGINNING.

Containing 3.8030 acres as known on plan by over & Tingley, Civil Engineers, dated 6-28-1944. All dimensions are U.S. Standard.

EXCEPTING AND RESERVING THEREFROM: the air rights over a portion therefrom conveyed to Delaware River Port Authority by deed of Publicker Industries, Inc. dated April 17, 1956 and recorded April 18, 1956 in deed book CAB 268 page 583.

ALL THOSE CERTAIN tracts of land, SITUATE in the 39<sup>th</sup> Ward of the City of Philadelphia and Commonwealth of Pennsylvania, on the East side of Delaware Avenue (250 feet wide). (1) BEGINNING at a point on the Northerly side of Packer Avenue (legally but not physically open) at the distance of 483.59 feet East of Delaware Avenue (legally and physically open) and extending thence, first North 13 degrees 52 minutes and 52 seconds East 39.66 feet to a point, second, South 75 degrees 30 minutes East 127.75 feet to a point, third south 14 degrees 30 minutes West 39.66 feet to a point; fourth North 75 degrees 30 minutes West 127.33 feet to the point and place of beginning.

CONTAINING 5,058 square feet, more or less, together with the Easterly ½ or portion of car washing building.

(2) BEGINNING at a point on the Northerly side of Packer Avenue (legally but not physically open) at the distance of 832.89 feet East of Delaware Avenue (legally and physically open) and extending thence; first, North 13 degrees 52 minutes 52 seconds East 544.11 feet to a point; second, North 75 degrees 28 minutes West 349.30 feet to a point; third, 13 degrees 52 minutes 52 seconds East 52.32 feet to a point; fourth, South, 75 degrees 28 minutes East 797.78 feet to a point; fifth, south 11 degrees 37 minutes 24.38 seconds West, along the bulkhead line established by the War Department 8/9/1909. A distance of 596.90 feet to a point in the Northerly side of aforesaid Packer Avenue, and sixth, North 75 degrees 30 minutes West 472 feet to the place of beginning.

CONTAINING 292,710 square feet, more or less; with any piers or other harbor structured landing therefrom into the Delaware River, and all riparian rights of the said Grantor as owner of



the said land to the pierhead line now established of which may be established by the War Department and as far as shall, by right of law, extend into the side-water of said River.

ALL THAT CERTAIN tract, piece or parcel of land, respectively more particularly described as follows:

SITUATE in the 39<sup>th</sup> Ward of the City of Philadelphia, Commonwealth of Pennsylvania.

BEGINNING at a point on the Northeast side of Packer Avenue (148 feet wide), which point of beginning is South 75 degrees 30 minutes East 611.184 feet from the intersection of the Northeast side of said Packer Avenue with the southeast side of Delaware Avenue (250 feet wide), thence extending along a line at right angles to said Packer Avenue North 14 degrees 30 minutes West 39.74 feet, thence extending North 75 degrees 30 minutes West 127.01 feet, thence extending North 13 degrees 52 minutes 52seconds East 505.67 feet, thence extending South 75 degrees 28 minutes East 350 feet, thence extending south 13 degrees 52 minutes 52 seconds West, 545.20 feet to a point on the Northeast side of Packer Avenue North 75 degrees 30 minutes West 222.41 feet to the first mentioned point and place of Beginning, as shown of Plan of Property of Defense Plant Corporation, dated 2/6/1943, made by over and Tingley, Civil Engineers.

ALL THOSE TWO CERTAIN lots or pieces of ground.

SITUATE IN THE 39<sup>TH</sup> Ward of the City of Philadelphia, Commonwealth of Pennsylvania, and described according to a Survey and Plan thereof made by Raymond C. good, Surveyor and Regulator of the 2<sup>nd</sup> survey District of said City of Philadelphia dated 11/3/1960, as follows.

THE FIRST THEREOF BEGINNING at a point in the Southerly side of Packer Avenue (148 feet wide) and the Northeasterly line of a proposed 25 feet wide railroad siding right-of-way at the distance of 550.511 feet eastward from the point of intersection of the easterly side of Delaware Avenue (250 feet wide) and the Southerly side of said Packer Avenue, thence extending along the southerly side of said packer Avenue, south 75 degrees 30 minutes East 157.309 feet to a point, thence extending South 59 degrees 58 minutes 33 seconds East 186.815 feet to a point, thence extending South 14 degrees 30 minutes West 43.090 feet to a point in a proposed Northerly line of the Delaware River Port Authority right-of-way, thence extending along the said proposed Authority right-of-way line North 72 degrees 28 minutes 7 seconds West 93.963 feet to a point, thence extending along the said proposed Authority right-of-way line south 17 degrees 31 minutes 53 seconds West 22.455 feet to a point, thence extending along the said proposed Authority right-of-way line North 72 degrees 28 minutes 7 seconds West 168.854 feet to a point in the Northeasterly line of said proposed railroad siding right-of-way, thence extending in a Northeasterly direction along the Northeasterly line of said proposed railroad siding right-of-way on an arc curving to the left, having a radius of 012.5 feet and subtending a central angle of 23 degrees 10 minutes 11 seconds an arc distance of 126.371 feet to the first mentioned point and place of beginning.



CONTAINING in area 0.57888 acres; and

THE SECOND THEREOF BEGINNING at a point in the southerly side of Packer Avenue (148 feet wide) at the distance of 330 feet Eastward from the point of intersection of the Easterly side of Delaware Avenue (250 feet wide) and the Southerly side of said Packer Avenue, and crossing the head of proposed 30 feet wide Delaware River Port Authority access road, thence extending along the Southerly side of said Packer Avenue South 75 degrees 30 minutes East 181.332 feet to a point in the Southwesterly line of a proposed 25 feet wide railroad siding right-of-way, thence extending in a Southeasterly direction along the southeasterly line of said proposed railroad right-of-way an arc of a circle curving to the right, having a radius of 287.5 feet and subtending a central angle of 26 degrees 19 minutes 32 seconds an arc distance of 132.097 feet to a point in the proposed Northerly line of the Delaware River Port Authority right-of-way North 72 degrees 28 minutes 7 seconds West 266.103 feet to a point in the Easterly line of the said 30 feet wide proposed access road, thence extending along the Easterly line of the said proposed access Road North 14 degrees 30 minutes East 86.036 feet to the first mentioned point and place of beginning.

CONTAINING in area .48596 acre.

EXCEPTING THEREOUT AND THEREFROM THE FOLLOWING THREE PARCELS:

(1) ALL that certain lot or piece of ground

SITUATE in the 39<sup>th</sup> Ward of the City of Philadelphia, Commonwealth of Pennsylvania, described according to a lease plan prepared for outdoor Advertising Company made by Barton and Martin Engineers Philadelphia, Pa dated 10/17/85 last revised 11/5/85 as follows:

BEGINNING at an interior point located the following two courses and distances from the intersection of the Easterly side of Delaware Avenue (250 feet wide) with the southerly side of Packer Avenue (148 feet wide)

- (1) S 75 deg 30 min 00 sec E along the Southerly side of Packer Avenue 475.242 feet to a point:
- (2) Leaving said side of Packer Avenue on a line curving to the right parallel with arc 32.500 feet distant from the centerline of a proposed railroad right-of-way having a radius of 267.500 feet and an arc distance of 18.912 feet to a point of beginning.

Thence from said point of beginning continuing along said curve an arc distance of 95.534 feet to a point; thence extending S 17 deg 31 min 53 sec W 20.019 feet to a point; thence extending N 72 deg 28 min 07 sec W 31.746 feet to a point, then extending S 17 deg 31 min 53 sec W 1.000 feet to a point; thence extending N 72 deg 28 min 07 sec W 39.156 feet to a point; thence extending N 17 deg 31 min 53 sec E 84.289 feet to the point and place of beginning.



CONTAINING 3971 square feet more or less.  
UNDER and subject to certain conditions as of record.

- (3) ALL THAT CERTAIN LOT OR PIECE OF GROUND, SITUATE IN THE 39<sup>TH</sup> WARD OF THE CITY OF PHILADELPHIA, COMMONWEALTH OF PENNSYLVANIA, DESCRIBED ACCORDING TO A LEASE PLAN PREPARED FOR OUTDOOR ADVERTISING COMPANY MADE BY BARTON & MARTIN ENGINEERS, PHILADELPHIA, PA DATED 10-3-1984 AND LAST REVISED 7-23-1985, AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHWESTERLY SIDE OF PACKER AVENUE (148.00 FEET WIDE), SAID POINT BEING MEASURED SOUTH 75 DEGREES 30 MINUTES 00 SECONDS EAST, 475.242 FEET ALONG THE SOUTHWESTERLY SIDE OF PACKER AVENUE FROM A POINT MARKING ITS INTERSECTION WITH SOUTHEASTERLY SIDE OF DELAWARE AVENUE (250.00 FEET WIDE), THENCE FROM SAID BEGINNING POINT CONTINUING ALONG THE SOUTHWESTERLY SIDE OF PACKER AVENUE SOUTH 75 DEGREES 30 MINUTES 00 SECONDS EAST, 36.00 FEET TO A POINT OF CURVE, THENCE ALONG THE SOUTHWESTERLY SIDE OF THE PROPOSED 25.00 FEET WIDE RAILROAD RIGHT OF WAY SHOWN ON SAID PLAN ON THE ARC OF A CIRCLE CURVING TO THE RIGHT HAVING A RADIUS OF 287.500 FEET, THE ARC DISTANCE OF 132.097 FEET TO A POINT THENCE, NORTH 72 DEGREES 28 MINUTES 07 SECONDS WEST 70.00 FEET TO A POINT, THENCE NORTH 17 DEGREES 31 MINUTES 53 SECONDS EAST 1.000 FEET TO A POINT, THENCE SOUTH 72 DEGREES 28 MINUTES 07 SECONDS EAST, 31.746 FEET TO A POINT, THENCE NORTH 17 DEGREES 31 MINUTES 53 SECONDS EAST 20.019 FEET TO A POINT OF CURVE, THENCE ON THE ARC OF A CIRCLE CURVING TO THE LEFT, HAVING A RADIUS OF 267.500 FEET, THE ARC DISTANCE OF 114.446 FEET TO THE FIRST MENTIONED POINT AND PLACE OF BEGINNING.

- (4) ALL CERTAIN lot or piece of ground, to wit:

SITUATE in the 39<sup>th</sup> Ward of the City of Philadelphia and described according to a lease plan made for Philadelphia outdoor Advertising Company by Barton and Martin, Engineers dated October 3, 1984 and revised November 5, 1984 as follows to wit:

BEGINNING at a point of the southeasterly side of Delaware Avenue (250' wide) said point being 208.48' southwesterly from the intersection of the Southeasterly side of Delaware Avenue and the Southeasterly side of Packer Avenue (148' wide) thence from said point of beginning extending along the southeasterly side of Delaware Avenue 135' 6-1/4" to a point; thence leaving said side of Delaware Avenue extending Southeastwardly on a line parallel with the Walt Whitman Bridge 30' 0" to a point; thence extending Northeastwardly on a line parallel with Delaware Avenue 30' 0" to a point; thence extending Northwestwardly on a line parallel with the Walt Whitman Bridge 29' 0" to a point; thence extending Northeastwardly on a line parallel with and 1' 0" distant to Delaware Avenue 75' 6-1/4" to a point; thence extending Southeastwardly on a line parallel with the Walt Whitman Bridge 34' 0" to a point; thence extending Northeastwardly on a line



parallel with Delaware Avenue 30' 0" to a point; thence extending Northwestwardly on a line parallel with the Walt Whitman Bridge 35' 0" to the point and place of beginning.

#### PENNSYLVANIA HAZARDOUS SITES CLEANUP ACT DISCLOSURES

The property being conveyed hereunder (the "Site") is currently listed on the National Priorities List ("NPL") and is being remediated by the United States Environmental Protection Agency ("EPA") in accordance with the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). The investigation of the site revealed that the following hazardous substances are located in the sediments and soils at the site: Volatile Organic Compounds, Polycyclic Aromatic Hydrocarbons, and Polychlorinated Biphenyls, dioxins, pesticides and inorganic compounds. The remedy chosen to clean up the site will be/is contained in a record of Decision ("ROD") on file with the EPA, Region III. The grantee of this deed, and any person who subsequently purchases, leases, inherits, or otherwise comes to control all or any portion of the site, shall not put the site to any use which would disturb or be inconsistent with the remedial response action being implemented at the site by the EPA, every deed for the conveyance of title, easement or other legal or equitable interest in the site or any portion thereof shall contain in the property description section of the conveyance document, a provision precluding any use of the site which would disturb or be inconsistent with the remedial response action implemented at the Site and shall contain a provision allowing for the continues unimpeded access to the site by the EPA and the Pennsylvania Department of Environmental Resources ("DER"). All restrictions and obligations in the Prospective Purchaser Agreement, effective as of December 5, 1994 and filed with the Department of records, Philadelphia, Pennsylvania (the "PPA") including but not limited to Sections VI and XVI thereof, shall run with the land and be binding upon any and all persons who shall subsequently purchase or lease the site or any portion thereof.

This acknowledgement has been included in satisfaction of the requirements set forth in Section 6.3 of the PPA, Section 405 of the Solid Waste Management Act, 35 P.S. §6018.405, and Section 512 (b) of the Hazardous Sites Cleanup Act, 35 P.S. § 6020.512 (b) (HSCA") for the purpose of indicating that (1) a disposal of hazardous substances has taken place in an extensive manner throughout much of the Site (precluding any metes and bounds description of the areas of such disposal), (2) the site is being remediated by the EPA in accordance with the National Contingency Plan, and (3) unless and until such remediation had been complete to the satisfaction of EPA and DER, the restrictions on its use and the requirement for the continues acknowledgement and subsequent deed restriction shall continue in full force and effect.



In accordance with a plan of property prepared by Barton and Martin Engineers dated March 10, 1986 situate in the 39<sup>th</sup> Ward of the City of Philadelphia.

Beginning at the point of intersection of the Northerly side of Packer Avenue (148 feet wide with the Easterly side of Delaware Avenue (250 feet wide); thence from said point of beginning extending along the said Easterly side of Delaware Avenue N 14' 30' 00" E 646.000 feet to a point in the center line of Bigler Street (60 feet wide, not legally opened); thence extending along said centerline of Bigler Street S 75' 30' 00" E 884.177 feet to a point; thence extending N 12' 14' 22" E 180.023 feet to a point; thence extending S 75' 30' 00" E. 355.986 feet to a point on the bulkhead line established by the secretary of War on September 10, 1940; thence extending along said bulkhead line S 01' 26' 33.9" W 113.426 feet to an angle point; thence still extending along said bulkhead line crossing Bigler Street S 11' 38' 16" W 916.533 feet to a point on the Northerly side of Packer Avenue; thence extending along said Northerly side of Packer Avenue N 75' 30' 00" W 1304.370 feet to the point and place of beginning.

Containing in area 26.45305 Acres.

#### LAND BETWEEN BULKHEAD AND PIERHEAD LINES

Beginning at an interior point on the bulkhead lines established by the Secretary of War on September 10, 1940, said point being located the following four (4) courses and distances from the intersection of the Northerly side of Packer Avenue (148 feet wide) with the Easterly side of Delaware Avenue (148 feet wide)

- (1) Along said Easterly side of Delaware Avenue N 14' 30' 00" E 846.000 to a point on the centerline of Bigler Street (60 feet wide not legally opened);
- (2) Along the centerline of Bigler Street S 75' 30' 00" E 884.117 feet point;
- (3) N 12' 14' 22' E 180.023 feet to a point;
- (4) S 75' 30' 00" E 355.896 feet to a point on the bulkhead line, the point of beginning;

Thence, from said point of beginning extending S 75' 30' 00" E 469.565 feet to a point on the pierhead line established by the Secretary of War on September 10, 1940; thence extending along said pierhead line crossing the head of Bigler Street S 02' 30' 27.2" W 349.408 feet to an angle point; thence still extending along said pierhead line S 13' 53' 11.1" W 684.140 feet to a point on the Northerly side of Packer Avenue; thence extending along said Northerly side of Packer Avenue N 75' 30' 00" W 478.100 feet to a point on the bulkhead line; thence extending along said bulkhead line crossing Bigler Street N 11' 38' 16" E 916.533 feet to an angle point; thence still extending along the said bulkhead line N 01' 26' 33.9" E 113.426 feet to the point and place of beginning.

CONTAINING in area 11.48938 acres.



Beginning at the point of intersection of the Easterly side of Delaware Avenue (250 feet wide) with the Southerly side of Packer Avenue (148 feet wide); thence from said point of beginning extending along said Southerly side of Packer Avenue S 75° 30' 00" E 300.000 feet to a point on the Westerly side of a 30 foot access road; thence along said Westerly side of said access road S 14° 30' 00" W 84.447 feet to a point on the Northerly right of way line for the Walt Whitman Bridge; thence along said Northerly right of way line N 72° 28' 07" W 300.420 feet to a point on the Easterly side of Delaware Avenue; thence along said Easterly side of Delaware Avenue N 14° 30' 00" E 68.560 feet to the point and place of beginning.

Containing in Area 22,951 square feet.

Beginning at a point on the Easterly side of Delaware Avenue (250 feet wide) said point being measured along said side of Delaware Avenue S 14° 30' 00" W 344.018 feet from the Southerly side of Packer Avenue (148 feet wide); thence from said point of beginning extending S 72° 28' 07" E 30.000 feet to a point; thence extending N 14° 30' 00" E 30.000 feet to a point; thence extending N 72° 28' 07" W 29.000 feet to a point; thence extending N 14° 30' 00" E 75.542 feet to a point; thence extending S 72° 28' 07" E 34.000 feet to a point; thence extending N 14° 30' 00" E 30.00 feet to a point on the Southerly right of way line for the Walt Whitman Bridge; thence along said right away line S 72° 26' 07" E 265.420 feet to a point; thence extending S 14° 30' 00" W 325.637 feet to a point; thence extending N 75° extending S 14° 30' 00" W 325.637 feet to a point; thence extending N 75° 0' 00" W 300.00 feet to a point in the Easterly side of Delaware Avenue; thence extending along said Easterly side of Delaware Avenue; thence extending along said Easterly side of Delaware Avenue N 14° 30' 00" E 205.982 feet to the point and place of beginning.

Containing in area 2.25095 acres

Beginning at the point of intersection of the Easterly side of a 30 foot access road with the Southerly side of Packer Avenue (148 feet wide), said point being measured S 75° 30' 00" E 320.000 feet along said Southerly side of Packer Avenue from the Easterly side of Delaware Avenue (250 feet wide); thence from said point of beginning extending along said Southerly side of Packer Avenue S 75° 30' 00" E 145.242 feet to a point; thence extending on a line curving to the right having a radius of 267.500 feet, a central angle of 4° 03' 2.73" and an arc distance of 18.912 to a point; thence extending S 17° 31' 53" W 84.289 feet to a point on the Northerly right of way line for the Walt Whitman Bridge; thence extending along said right of way line N 72° 28' 07" W 156.947 feet to a point on the Easterly side of the aforesaid 30 foot access road; thence extending along said Easterly side of the access road N 14° 30' 00" E 86.036 feet to the point and place of beginning.

Containing in area 14,289 square feet.



Beginning at a point of intersection of the Southerly side of Packer Avenue with the Easterly side of a 25 foot railroad right of way, said point being measured along said Southerly side of Packer Avenue S 75° 30' 00" E 550.511 feet from the Easterly side of Delaware Avenue (250 feet wide); thence from said point of beginning extending along said Southerly side of Packer Avenue S 75° 30' 00" E 157.309 feet to a point; thence extending S 59° 58' 33" E 186.815 feet to a point; thence extending S 14° 30' 00" W 43.090 feet to a point in the Northerly right of way line for the Walt Whitman Bridge; thence extending the following three (3) courses and distances along said Northerly right of way line for the Walt Whitman Bridge;

- 1) N 72° 28' 07" W 93.963 feet to a point;
- 2) S 17° 31' 53" W 22.455 feet to a point;
- 3) N 72° 28' 07" W 168.854 feet to a point on the Easterly side of the aforesaid 25 foot railroad right of way;

Thence extending along said Easterly side of the 25 foot railroad right of way on a line curving to the left having a radius of 312.500 feet , a central angle of 23° 10' 11" and an arc distance of 126.371 feet to the point and place of beginning.